

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL

Before The Honorable Phyllis J. Hamilton, Judge

United States of America,)	Jury Trial
)	
Plaintiff,)	Volume 8
)	
VS.)	NO. CR 14-00590 PJH
)	
RICHARD THOMAS GRANT,)	Pages 1368 through 1610
)	
Defendant.)	Oakland, California
_____)	Friday, June 17, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Friday, June 17, 2016

8:32 a.m.

P R O C E E D I N G S

(The following proceedings were heard in the presence of the jury:)

THE CLERK: Please be seated and come to order.

THE COURT: All right. Good morning, counsel.

MR. COHAN: Good morning.

THE COURT: Ladies and gentlemen of the jury.

All right. Now, we were in the middle or toward the end of your examination of Mr. Mottahedeh. And you were examining him with respect to which exhibit, counsel?

MR. COHAN: 129, Your Honor. So this is in evidence already.

THE COURT: All right.

MR. COHAN: And consequently, if I may, I'd like to display Exhibit 129.

Before I go farther, I want to make sure that the court reporter is picking this up, and I'm remembering to talk into the mic.

THE REPORTER: Yes, thank you.

MR. COHAN: You're welcome.

All right.

DIRECT EXAMINATION

BY MR. COHAN:

Q. Mr. Mottahedeh, good morning.

1 **A.** Good morning, sir.

2 **Q.** So do you see Exhibit 129 before you?

3 **A.** Yes.

4 **Q.** Okay.

5 (Exhibit published.)

6 **BY MR. COHAN:**

7 **Q.** Inviting your attention to this exhibit, do you recognize
8 it?

9 **A.** Yes.

10 **Q.** And how do you recognize this exhibit?

11 I take it the jury is able to see this? Maybe I should
12 zoom it a little bit.

13 No. That's the wrong way.

14 (Exhibit published.)

15 **MR. COHAN:** Okay.

16 **Q.** So how is it, sir, that you recognize this Exhibit 129,
17 this -- there's obviously a typo. It says, "Robert T. Grant."
18 You received it from Richard T. Grant, Junior, didn't you?

19 **A.** Yes.

20 **Q.** And was that sometime shortly after September the 2nd of
21 2009?

22 **A.** Yes.

23 **Q.** Did you have occasion to discuss any of the content of
24 this exhibit? In particular, I want to invite your attention
25 to the paragraph that says, quote, you have the right to

1 representation as stated in Publication 1 that was previously
2 sent to you and on Form 4564, No. 1, information document
3 request.

4 Do you see that?

5 **A.** Yes.

6 **Q.** And then below that, we have enclosed Publication 2105,
7 quote, why do I have to pay taxes, end quote, for you to read.

8 And in addition, we have enclosed Notice 609, quote
9 Privacy Act, end quote, and Publication 1, quote, Your Rights
10 As a Taxpayer. See all that?

11 **A.** Yes.

12 **Q.** And if I might invite your attention to the second page,
13 you can see that this was sent by or at least signed by --
14 excuse me -- Patricia Young-Lau.

15 **A.** Yes.

16 **Q.** Okay. And did you see the second page as well when you
17 received this from Mr. Grant?

18 **A.** Yes.

19 **Q.** Inviting your attention, if I might, to the third page in
20 particular. I think where we were was under the description
21 of documents requested by Ms. Young-Lau, paragraph numbered 2.

22 So do you have that before you?

23 **A.** Yes.

24 **Q.** I think where we were was I was asking you about whether
25 you had had a discussion with Mr. Grant concerning the

1 following language: Quote, please be aware that
2 Internal Revenue Code Section 6000 and 6011 require that each
3 person who owes income files a return. If the person doesn't
4 file, Internal Revenue Code Section 6020(b) allows the
5 Internal Revenue to prepare a return from income sources
6 available.

7 Did you can you discuss that language with Mr. Grant
8 sometime in September or October of 2009?

9 **A.** Yes.

10 **Q.** And what was the nature of the discussion concerning
11 whether you told Mr. Grant or did not tell Mr. Grant if
12 Section 6000 and 6011 applied to him?

13 **THE COURT:** Excuse me.

14 **MR. SAMPSON:** Leading, Your Honor.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** I explained to him that this sentence,
17 to me it did not make any sense, that if somebody owes income
18 or money to somebody else, that does not require the person to
19 file a return. So I expressed to him that maybe this is a
20 typo, this part of it, or misunderstanding by the IRS agent.
21 But I told him that I don't understand why that sentence says
22 that.

23 **BY MR. COHAN:**

24 **Q.** What about the question of whether you discussed with
25 Mr. Grant the applicability or non-applicability of Section

1 6000 and 6011 to Mr. Grant?

2 **A.** I discussed with him that Section 6000 and -11, if the
3 person is required to file a return, then he is required to
4 file under those sections. But if he's not required to file
5 in the first place, he's not required to file, period, under
6 any sections.

7 **Q.** Did you mention to him that the Internal Revenue,
8 according to this document, can prepare returns for you if you
9 don't file your own under Section 6020(b)?

10 **A.** Yes, I did tell him that that part is correct, that if the
11 IRS believes that the person is required to file a return, and
12 they have not done so, the IRS does have the authority to go
13 under Section 6020(b) and file a return for that person.

14 **THE COURT:** Excuse me. Counsel, I think I should
15 give the limiting instruction that we talked about yesterday.

16 Ladies and gentlemen, you're listening to testimony from
17 this witness about things that he said to the defendant
18 outside of the courtroom. And I instruct you that this
19 evidence is being admitted for a limited purpose. That
20 purpose is demonstrating the defendant's state of mind,
21 knowledge, or the effect of the statement on the defendant.
22 It is admitted only for that limited purpose and for no other
23 purpose.

24 **MR. COHAN:** May I proceed?

25 **THE COURT:** Yeah.

1 **MR. COHAN:** Thank you.

2 **Q.** Now, inviting your attention to the next page of the
3 exhibit, Mr. Mottahedeh, do you have that before you?

4 **A.** Yes.

5 (Exhibit published.)

6 **BY MR. COHAN:**

7 **Q.** Did you -- Do you recall having any discussion with
8 Mr. Grant about any of what's on this page?

9 **A.** The last page.

10 **Q.** Okay. The last page. Let me turn to that page, then.

11 (Exhibit published.)

12 **BY MR. COHAN:**

13 **Q.** Is this the last page to which you're referring?

14 **A.** Yes.

15 **Q.** And let me shrink this a little bit. Oh, you have the
16 entire thing in front of you, don't you?

17 **A.** Yes, I do.

18 **Q.** All right. So what portions of this page do you recall
19 discussing with Mr. Grant?

20 **A.** I discussed the part, paragraph -- it's not numbered, but
21 if you count it after the first paragraph, the fourth
22 paragraph that says "Truth." It's a rather big paragraph that
23 starts with "Truth."

24 **Q.** Okay. Just a moment if I may. Let's make sure I'm --

25 (Exhibit published.)

1 **BY MR. COHAN:**

2 **Q.** Okay. Now, according to the government publication, this
3 is the truth. Can I ask you a preliminary question?

4 Do you have an understanding of difference between truth
5 and propaganda?

6 **A.** Yes.

7 **MR. SAMPSON:** Objection.

8 **BY MR. COHAN:**

9 **Q.** What's the difference?

10 **MR. SAMPSON:** It's argumentative.

11 **THE COURT:** Sustained.

12 **BY MR. COHAN:**

13 **Q.** Do you know who is responsible for making this statement
14 of what is the truth? Is there an individual who says
15 something under penalty of perjury, or do you know where this
16 comes from?

17 **A.** This just come from some IRS employee who put their
18 opinion of the law in writing and mailed it out.

19 **Q.** That's just an assumption on your part, right? You don't
20 really know who sent it, do you?

21 **A.** I really don't know who put this thing together.

22 **Q.** Okay. So --

23 **THE COURT:** All right. And then the witness's last
24 answer is stricken, and the jury is instructed to disregard
25 it.

1 **BY MR. COHAN:**

2 **Q.** If I may, are we talking about the term voluntary
3 compliance means that each of us is responsible for filing a
4 tax return when required?

5 **A.** Yes.

6 **Q.** And what, if anything, did you discuss with Mr. Grant
7 about the meaning of that statement, quote, the term voluntary
8 compliance means that each of us is responsible for forming a
9 tax return when required?

10 **A.** Well, I read with him the very first sentence of that
11 paragraph slowly so that, you know, he understands what the
12 sentence actually means. And it says the term voluntary
13 compliance means that each of us is responsible for filing a
14 tax return when required and for determining and paying the
15 correct amount of tax.

16 And I explained to him that I don't understand how
17 something that is required can be voluntary at the same time.

18 **Q.** Was this part of a discussion that you had with him on
19 more than one occasion, about whether most working people in
20 the United States are required to file income taxes by law or
21 they aren't?

22 **MR. SAMPSON:** Objection, Your Honor. This is leading
23 the witness.

24 **THE COURT:** Sustained.

25 **MR. SAMPSON:** Coaching the witness.

1 **THE COURT:** Sustained.

2 **BY MR. COHAN:**

3 **Q.** Did you have a discussion with Mr. Grant or more than one
4 about whether income tax filings are voluntary or mandatory
5 under law?

6 **A.** Yes.

7 **Q.** And can you summarize that discussion or those discussions
8 for the ladies and gentlemen of the jury?

9 **A.** Yes. I explained to him that in my opinion, my research,
10 and that of my student, the former gun-carrying IRS Special
11 Agent with the IRS's own Criminal Investigation Division, the
12 average American is not required to file and pay the federal
13 income tax.

14 **Q.** Okay.

15 **MR. COHAN:** May I have a moment, Your Honor?

16 **THE COURT:** Yes.

17 **MR. COHAN:** Thanks for that.

18 (Off-the-record discussion.)

19 **A JUROR:** -- when exhibits are not being displayed
20 these monitors are turned off? They're very bright.

21 **THE COURT:** All right.

22 **THE CLERK:** I can't turn them off.

23 **THE COURT:** It's up to him.

24 **THE CLERK:** No, when -- It's -- I mean, I'm in
25 control of their monitors, and I can't physically turn them

1 off.

2 **A JUROR:** Just black them out somehow?

3 **THE COURT:** Hold on. Hold on. Hold on.

4 Nichole, when you say you can't turn them off, you mean
5 you have to blacken the whole system?

6 **THE CLERK:** Well, I can -- I guess I can switch out.

7 **THE COURT:** Yeah, but then --

8 **THE CLERK:** Yeah.

9 **THE COURT:** You can't do it -- He can't use it unless
10 you switch the whole system on.

11 **THE CLERK:** Right.

12 **MR. COHAN:** I have --

13 **THE CLERK:** I can do it. It just will take time.

14 (Simultaneous colloquy.)

15 **THE COURT:** Hold on.

16 Do all the jury members find that these lights are too
17 glaring to leave on during the course of a witness's
18 testimony? Because we -- it's a cumbersome procedure to turn
19 the whole thing off. Anybody besides juror No. 10?

20 Okay. All right.

21 **THE CLERK:** We could use that.

22 **THE COURT:** All right.

23 **THE CLERK:** They could use the government --

24 **THE COURT:** To the extent that the exhibits are
25 already in.

1 **MR. SAMPSON:** If they're in.

2 **THE COURT:** All right. If they're in, then the
3 government will use their system.

4 (Off-the-record discussion.)

5 **THE COURT:** All right. It's just when we use -- when
6 the ELMO's being used that it's a problem.

7 Okay. Go ahead.

8 **MR. COHAN:** This technology is above my pay grade,
9 Your Honor. I don't know how to do it.

10 **THE COURT:** Okay.

11 **MR. COHAN:** Apologies.

12 **Q.** Okay. This next exhibit that I want to use and invite
13 this witness attention to is Exhibit 130, and it is in
14 evidence.

15 So, Mr. Garland, can you --

16 (Exhibit published.)

17 **MR. COHAN:** Thank you very kindly.

18 **Q.** So now the individual monitors are off, and everybody can
19 see that one?

20 All right. So, Mr. Mottahedeh, do you recognize Exhibit
21 130?

22 **A.** Yes.

23 **Q.** And what is Exhibit 130?

24 **A.** It's a response I wrote for Mr. Grant to send to IRS
25 Revenue Agent Patricia Young-Lau.

1 Q. And it appears that it's nothing more than rescheduling an
2 appointment. Is that your understanding what you were doing?

3 A. Yes.

4 Q. So no matter what Mr. Grant received from the IRS or
5 Franchise Tax Board or any court in which he had an action
6 going on related to his income tax, is it your understanding
7 that everything would be sent to you for your deciding what
8 type of response and preparing whatever response was going to
9 be provided by Mr. Grant?

10 A. Yes.

11 Q. Okay. And so that's what this was?

12 A. Yes.

13 Q. All right. Thank you.

14 So the next exhibit is Exhibit 359. Exhibit 359 is also
15 in evidence.

16 So, Mr. -- if you would --

17 (Exhibit published.)

18 MR. COHAN: Thank you.

19 Q. Now, Mr. Mottahedeh, inviting your attention to Exhibit
20 359, do you have that before you?

21 A. Yes.

22 Q. Do you recognize it?

23 A. Yes.

24 Q. And can you tell the ladies and gentlemen of the jury what
25 this is that you --

1 Well, first of all, did you write this?

2 A. Yes.

3 Q. Okay. And what was your purpose in preparing this
4 document?

5 A. Mr. Grant's brother and partner, Mr. Randall Grant, had
6 received a summons from the IRS requesting documents from
7 Grant Engineering, the business that Mr. Richard and Robert
8 (sic) Grant owned together.

9 Q. You mean Richard and Randall, don't you?

10 A. Yes. I'm sorry. Richard and Randall, yes.

11 And so I prepared this response for Mr. Randall Grant as
12 the general partner of Grant Engineering -- to send to the IRS
13 because it was in relation to Mr. Richard Grants (sic).

14 Q. Okay. And inviting your attention to the second page --
15 (Exhibit published.)

16 BY MR. COHAN:

17 Q. Did you write every bit of this?

18 A. Yes.

19 Q. And it says, quote, Due to the fact that your response is
20 not timely and due to other personal considerations, I'm
21 unable to appear at this time.

22 A. Yes. And the paragraphs above it explain that in more
23 detail why the IRS's summons wasn't timely.

24 Q. Okay. Now, do you know who actually affixed the signature
25 below, respectfully submitted, and it appears to be Randall L.

1 Grant, right?

2 A. That's what I believe also.

3 Q. Okay. Do you know who signed it?

4 A. I believe Mr. Randall Grant signed it, brother of
5 Mr. Richard Grant.

6 Q. Right.

7 MR. SAMPSON: Objection, asked and answered. He --
8 lack of foundation.

9 THE COURT: Yeah, that's the problem. How does --
10 What's that based upon? Please --

11 MR. COHAN: I'll clear this up.

12 THE COURT: Please establish.

13 BY MR. COHAN:

14 Q. In fact, sir, you don't know who actually signed this
15 because you weren't present when it was signed, correct?

16 A. That is correct.

17 Q. Thank you.

18 THE COURT: Then the jury is instructed to disregard
19 his last answer indicating that he did know.

20 BY MR. COHAN:

21 Q. Did you ever speak with Randall Grant about this
22 particular document?

23 A. No.

24 Q. Okay.

25 The next exhibit is also in evidence. It's Exhibit 134.

1 Do you have that before you?

2 **A.** (Reviewing document.)

3 Yes.

4 (Off-the-record discussion.)

5 **MR. COHAN:** If you would, sir.

6 (Exhibit published.)

7 **BY MR. COHAN:**

8 **Q.** Do you recognize this document?

9 **A.** Yes.

10 **Q.** What is this document, sir?

11 **A.** It's the petition of Grant Engineering to the United
12 States District Court to quash the IRS's summons of -- the
13 summons that IRS had issued to Grant Engineering about
14 Mr. Richard Grant.

15 **Q.** Actually, if I might invite your attention to page 2.

16 (Exhibit published.)

17 **MR. COHAN:** No, I'm sorry. That shows the receipt
18 for payment. The third page of the exhibit, page 2 of the
19 petition. It's the next page.

20 (Exhibit published.)

21 **MR. COHAN:** There we go.

22 **Q.** All right. Inviting your attention to this page, do you
23 see that this was actually an IRS summons not to Grant
24 Engineering but it was to Washington Mutual bank concerning
25 records that pertained to Grant Engineering?

1 **MR. SAMPSON:** Objection, the document speaks for
2 itself. He's describing the document to the witness.

3 **THE COURT:** Yes. It's a very leading question,
4 counsel. Rephrase, please.

5 **BY MR. COHAN:**

6 **Q.** Did you testify mistakenly a moment ago when you said that
7 the summons was a summons to Grant Engineering instead of
8 third-party summons that appears to be the subject of this
9 petition to quash?

10 **A.** Yes, because I didn't have a chance to really look at it
11 closely and refresh myself. It looked like -- It is from
12 Grant Engineering. And -- But now that I see that page 2, it
13 does say in page 2 that it is to quash the records of
14 Washington Mutual Bank.

15 **Q.** Okay.

16 So what was your purpose in preparing -- First of all, did
17 you prepare the entirety of this petition to quash the
18 summons, and it's got --

19 (Reviewing document.)

20 The exhibit has actually a number of pages, but let's go
21 to the eighth page of the exhibit if we could.

22 (Exhibit published.)

23 **BY MR. COHAN:**

24 **Q.** All right. Do you recognize this document?

25 **A.** (Reviewing document.)

1 Yes. This was the IRS summons that was issued to
2 Washington Mutual Bank about the records of Grant
3 Engineering & Manufacturing.

4 Q. Okay. So this was the summons as to which you were
5 preparing the petition to quash; is that right?

6 A. Yes.

7 Q. And why did you provide this petition to quash --

8 MR. SAMPSON: Objection.

9 BY MR. COHAN:

10 Q. -- to Mr. Grant?

11 MR. SAMPSON: Your Honor, relevance as to why this
12 witness did something. What matters is what the defendant
13 understood.

14 THE COURT: Sustained.

15 BY MR. COHAN:

16 Q. What did you tell Mr. Grant about your reasons for
17 preparing this petition to quash?

18 A. Those reasons are actually listed in the -- the summons.
19 They're the cause of action --

20 Q. You mean, in the -- in your petition to quash the summons?

21 A. Yes, the reasons are listed. To protect his rights. IRS
22 has not been following the proper procedures to do this. And
23 violating his rights at the same time. And it's all listed in
24 there.

25 Q. So inviting your attention to page 3 of the exhibit.

(Exhibit published.)

BY MR. COHAN:

Q. You referred to reasons, and you have before you this page 3. And is it fair to say you wrote all of the -- the verbiage here?

A. Yes.

Q. Okay. And so it's your contention that you wrote this and provided it to Mr. Grant so that he would be protecting his rights?

MR. SAMPSON: Objection, Your Honor. He's asking the contention.

THE COURT: Yes. Improper. What -- It's not his contention. Rephrase.

BY MR. COHAN:

Q. Can you tell the ladies and gentlemen of the jury what you told Mr. Grant as to the reasons for him to submit this petition to the United States District Court to quash the IRS summons that's attached it to?

A. Yes, I told him, first of all, that the IRS had not followed the proper procedures stated in the IRS Code sections which are listed here.

The first one is that it was not timely. There is a certain amount of time which things must take place under the law and the IRS Code. And the IRS didn't meet those proper timely requirements.

1 No. 2, the IRS is required to provide record of persons
2 who IRS has contacted about Grant Engineering. And the IRS
3 had not done so.

4 Third, I stated that I believe that although they make it
5 look like it was just a civil case about money, they're --
6 actually the IRS was pursuing him criminally and referred him
7 to the U.S. Department of Justice for criminal prosecution,
8 exactly like this case that ended up being.

9 **Q.** And on page 4?

10 **MR. SAMPSON:** Your Honor, I need to object. The --
11 the witness is reading while he's talking about the things,
12 and he's saying that he told Mr. Grant these things. It's a
13 little confusing what he told Mr. Grant or what was in this
14 document.

15 **THE COURT:** Yes. And --

16 **MR. COHAN:** A false dichotomy, Your Honor. Obviously
17 I'm eliciting this witness recollection looking at the
18 document explaining the document to Mr. Grant.

19 **THE COURT:** You can ask him --

20 **MR. COHAN:** So we can go refresh recollection --

21 **THE COURT:** Well, that is -- that is the procedure.

22 **MR. COHAN:** Very well.

23 **THE COURT:** That is required.

24 **BY MR. COHAN:**

25 **Q.** Mr. Mottahedeh, can you recall what you wrote in 2010 in a

1 petition that you filed -- strike that -- that you provided to
2 Mr. Grant that he filed after you prepared it?

3 **A.** I could recall it after I take a look at the document,
4 refresh myself, yes.

5 **Q.** All right. Without refreshing your recollection by
6 looking at the document, can you recall every one of these
7 things that you allege here?

8 **A.** No, I could not.

9 **Q.** Okay.

10 Well, take a moment, then, look at the fourth cause of
11 action and see if it refreshes your recollection.

12 **A.** (Reviewing document.)

13 Okay.

14 **Q.** So what was it that you were writing here for Mr. Grant to
15 allege to protect his rights as you saw it?

16 **A.** (Reviewing document.)

17 What I was saying here is, I told him that Washington
18 Mutual is not a specified third-party recordkeeper which IRS
19 can get the records of Grant Engineering about. That's what
20 No. 4 is.

21 **Q.** And the -- without reading from this, can you remember the
22 fifth, sixth, and seventh cause of action that you allege here
23 as grounds for a court to quash the summons by the IRS to
24 Washington Mutual?

25 **MR. SAMPSON:** I object. The witness is obviously

1 reading. He should put the document away. Mr. Cohan said
2 without reading the document.

3 **THE COURT:** Yes. Sustained.

4 **MR. COHAN:** Can I get an answer to that question?

5 **THE COURT:** No. Rephrase it.

6 **BY MR. COHAN:**

7 **Q.** Is it fair to say that without reading this document, you
8 really can't recall the details of what you were thinking six
9 years ago?

10 **A.** That is correct.

11 **Q.** Okay.

12 I'll move on from this exhibit.

13 Inviting your attention to Exhibit 136.

14 (Exhibit published.)

15 **MR. COHAN:** Again, it's in evidence.

16 **Q.** Do you recognize Exhibit 136, Mr. Mottahedeh?

17 **A.** (Reviewing document.)

18 Yes.

19 **Q.** And what is Exhibit 136?

20 **A.** This is a petition to quash that Mr. Richard Grant filed
21 to quash an IRS summons to some -- and let me see --
22 apparently some third parties. I have to look at page 2 to
23 refresh myself as to what it was -- what summons it was
24 quashing.

25 **Q.** Well, let's look at the --

1 **MR. SAMPSON:** Memory is not exhausted, Your Honor. I
2 object.

3 **THE COURT:** Yes.

4 **MR. SAMPSON:** We haven't established that.

5 **THE COURT:** Yes. We -- Counsel, we do have to follow
6 the proper procedure.

7 **MR. COHAN:** All right.

8 **Q.** Do you recall without looking at this document what you
9 were thinking when you drafted this document and sent it to
10 Mr. Grant on or about, I guess, early July or late June of
11 2011?

12 **A.** Without look at the document, refreshing myself, I could
13 not tell you exactly what -- what it was about.

14 **Q.** Okay.

15 **THE COURT:** If you want him to refresh his
16 recollection, then he can look at --

17 (Simultaneous colloquy.)

18 **MR. COHAN:** Yes.

19 **Q.** Please take your time. Take all the time you want and
20 review the entire document, and we'll just wait.

21 **THE COURT:** Well, we're not going to wait for an
22 indefinite amount of time.

23 **MR. COHAN:** No. Just a reasonable time for him to
24 review an eight-page document, Your Honor. If your rulings
25 are your rulings, I'll follow them.

1 **THE COURT:** All right.

2 **MR. COHAN:** Of course. But that's what we're going
3 to have to do.

4 **THE COURT:** All right. But don't argue with me about
5 it.

6 **MR. COHAN:** I'm not arguing.

7 **THE WITNESS:** (Reviewing document.)

8 Okay. I'm prepared to respond your questions about this
9 exhibit.

10 **BY MR. COHAN:**

11 **Q.** Okay.

12 Don't look down at the document while you're responding,
13 please. Okay?

14 **A.** Okay.

15 **Q.** Thank you.

16 Now, do you recall what the subject was of the information
17 that this petition to quash was seeking to quash, meaning
18 prevent the person who got the summons from providing the
19 information to the IRS, what information and from whom was the
20 subject of this petition to quash?

21 **A.** The IRS Special Agent wanted to get information about
22 Mr. Grant from several different persons around the United
23 States. And this was a proper method to challenge that.

24 **Q.** Do you recall the -- the particular source of information
25 in this Exhibit 136 without looking at Exhibit 136?

1 **A.** No.

2 **Q.** Okay. Do you need to look at it longer to know the
3 persons to whom it was directed?

4 **A.** Yes.

5 **Q.** Take another moment, if you would, sir. And I'd invite
6 your attention to the bottom of page 1 that identifies the
7 recipients of the -- of the summons.

8 **A.** (Reviewing document.)

9 Carol Zineck (phonetic) & Associates in Petaluma,
10 California; and Moore (phonetic) & Company in Novato,
11 California.

12 **MR. SAMPSON:** I do object. He's just reading from
13 the document.

14 **THE COURT:** Overruled on this one.

15 **BY MR. COHAN:**

16 **Q.** So do you know who Carol Zinck & Associates and Morre
17 C.P.A & Company are?

18 **A.** No.

19 **Q.** Do you -- Did you have a conversation with Mr. Grant about
20 this summons and the petition to quash that you prepared for
21 him prior to actually your drafting up this petition?

22 **A.** Restate that question, please.

23 **Q.** Sure. Do you recall having a conversation -- Well, let's
24 back up.

25 Did you receive the summons -- if you would, look at the

1 page 8 -- excuse me -- page 8 and page 11 of this Exhibit 136.
2 And you'll see there are actually two summonses, one to Carol
3 Zinck & Associates --

4 (Exhibit published.)

5 **BY MR. COHAN:**

6 **Q.** -- and one to more -- Morre & Company.

7 Do you see that?

8 **A.** Yes.

9 **Q.** And did Mr. Grant send those summonses to you for you to
10 deal with them?

11 **A.** Yes.

12 **Q.** And did you prepare this petition that constitutes Exhibit
13 136?

14 **A.** Yes.

15 **Q.** And do you recall any of the details of your discussions
16 with Mr. Grant about preparing this petition and -- and
17 instructing him to file it without looking at the document?

18 **A.** Not very specifically because it happened so many years
19 ago. But basically, I just discussed the contents of it to
20 make sure he understood them.

21 **MR. COHAN:** Okay.

22 **MR. SAMPSON:** Objection. He said he didn't recall
23 it.

24 **THE COURT:** Overruled.

25 **MR. COHAN:** We'll move on.

1 Q. If I may, let's take a look at Exhibit 358.

2 A. (Reviewing document.)

3 MR. SAMPSON: I don't have a copy.

4 MR. COHAN: Of Exhibit 358?

5 MR. SAMPSON: Oh, okay. There's not one in the
6 binders.

7 MR. COHAN: Oh, it's 'cause it's your exhibit. I'm
8 sorry.

9 Do you need a copy of it?

10 THE COURT: I think one of you gave me the copy. I
11 have an extra.

12 MR. COHAN: Counsel?

13 MR. SAMPSON: It's fine.

14 THE COURT: I think you gave me -- One of you gave me
15 that copy.

16 MR. COHAN: Thank you.

17 (Exhibit published.)

18 BY MR. COHAN:

19 Q. Please take a moment, if you would, Mr. Mottahedeh, and
20 look at Exhibit 358. That's a two-page exhibit.

21 A. Yes.

22 Q. Okay.

23 Do you recognize that handwriting?

24 A. No.

25 Q. Okay. Inviting your attention to the second page, I want

1 you to please review that second page of the handwritten
2 script, the second page.

3 (Exhibit published.)

4 **MR. COHAN:** There we go. There's the second page.

5 (Exhibit published.)

6 **BY MR. COHAN:**

7 **A.** Yes.

8 **Q.** Have you read the entire thing?

9 **A.** Yes.

10 **Q.** Do you recall having a conversation with Richard Grant
11 about a summons that Randall Grant had received from Special
12 Agent Moran?

13 **A.** Yes.

14 **Q.** And what was that conversation that you had about this
15 subject with Richard Grant?

16 **A.** (Reviewing document.)

17 I don't specifically recall because I did not -- I don't
18 think I prepared this letter.

19 **Q.** Do you recall discussing the contents of this letter with
20 Mr. Grant so he could draft the letter?

21 **A.** I think what I did in this case because it was his brother
22 and his brother was nervous about things and did not want to
23 talk to me, so I told Mr. Grant some of the legal aspects of
24 this case and the factual aspect of the case. And then
25 Mr. Grant told me that he'll talk to his brother about doing

1 something or writing a letter. And this was the result of
2 that. So I did not dictate the contents of this letter.

3 **Q.** Okay.

4 **MR. SAMPSON:** Objection, Your Honor. The answer
5 contained hearsay. It's not a party opponent.

6 **THE COURT:** It's a little difficult to parse it all
7 out. First of all, it's not clear to me from the witness's
8 answer that he knows anything about this letter, and you need
9 to clarify exactly what his knowledge is about this letter.

10 **BY MR. COHAN:**

11 **Q.** Well, that's the purpose of my questions.

12 Mr. Mottahedeh, do you have any further recollection about
13 any conversation you had with Richard Grant about this Exhibit
14 358 concerning preparing it?

15 **A.** Like I said, the only thing I can think of that I said to
16 Mr. Grant that may have related to this document is that I
17 spoke with Mr. Richard Grant about the summons to his brother
18 and what are the legal and factual issues related to it.

19 And based upon that, apparently they may have had a
20 conversation. I don't know. But that's as far as I can tell
21 you about my relation to this letter.

22 **THE COURT:** All right. I'd like to clarify this.

23 Have you seen this letter before?

24 **THE WITNESS:** No.

25 **THE COURT:** Did you prepare this letter?

1 **THE WITNESS:** No.

2 **THE COURT:** Do you know anything about this letter?

3 **THE WITNESS:** No.

4 **MR. COHAN:** Okay.

5 **Q.** Inviting your attention to Exhibit 138.

6 **A.** (Reviewing document.)

7 (Exhibit published.)

8 **THE WITNESS:** Yes.

9 **BY MR. COHAN:**

10 **Q.** Do you recognize Exhibit 138?

11 **A.** Yes.

12 **Q.** What is it?

13 **A.** It's a petition by Mr. Richard Grant to quash an IRS
14 summons issued to some third parties.

15 **Q.** And do you have any independent recollection of what you
16 were thinking when you drafted what has been admitted as
17 Exhibit 138?

18 **MR. SAMPSON:** Objection, Your Honor, what -- what the
19 witness was thinking.

20 **THE COURT:** Sustained.

21 **BY MR. COHAN:**

22 **Q.** Do you recall having a conversation with Richard Grant
23 about -- Well, strike that. We'll back up.

24 Did you receive a summons from Rick Grant as to which this
25 was a petition to quash that summons that you drafted?

1 **A.** Yes.

2 **Q.** And do you recall the details of your discussion with Rick
3 Grant about the summons that you were seeking to quash or
4 seeking to assist Mr. Grant in quashing by drafting up this
5 petition?

6 **A.** Not without looking at the document, refreshing myself.

7 **Q.** Are you satisfied that you're the person who drafted this
8 document up?

9 **A.** Yes.

10 **Q.** And did you tell Rick Grant that it was to protect his
11 rights?

12 **A.** Yes.

13 **Q.** Okay. I'll move on.

14 Let's go to Exhibit 140, please.

15 (Exhibit published.)

16 **BY MR. COHAN:**

17 **Q.** Do you recognize Exhibit 140?

18 **A.** (Reviewing document.)

19 Yes.

20 **Q.** And what is Exhibit 140?

21 **A.** It's another petition to quash IRS summons that was issued
22 against Mr. Richard Grant.

23 **Q.** And did you receive the summons as to which this is a
24 petition to quash from Richard Grant prior to the time you
25 prepared this petition to quash for Mr. Grant?

1 **A.** Yes.

2 **Q.** And you drafted up the petition?

3 **A.** Yes.

4 **Q.** As you sit here today, do you recall the details of your
5 discussion with Mr. Grant?

6 **A.** Again, not without looking at the document in more detail
7 to refresh myself.

8 **Q.** Okay. Do you want to take a moment, please, to look at
9 the document. It's about five pages long.

10 **A.** (Reviewing document.)

11 Okay.

12 **Q.** What do you recall about this document now that you've
13 taken a moment to refresh your recollection about it?

14 **A.** This was a -- This is a summons to -- that IRS had issued
15 to Macy's department store.

16 **MR. SAMPSON:** Your Honor, as the witness is
17 answering, he's reading, he's looking at the document.

18 **THE COURT:** Okay.

19 **MR. SAMPSON:** I'm not sure this is proper
20 refreshment.

21 **THE COURT:** Sustained.

22 **BY MR. COHAN:**

23 **Q.** Without looking at the document, can you recall these
24 details, Mr. Mottahedeh?

25 **A.** No.

1 Q. Okay.

2 Now, you -- as -- you've just testified this morning you
3 prepared a number of petition (sic) to quash for Mr. Grant
4 back in 2009, -10, and -11, correct?

5 A. Correct.

6 Q. Have you prepared petitions to quash for any other people
7 who have purchased the Royal Freedom Package from Freedom Law
8 School?

9 A. Yes.

10 Q. Would it be fair to say that you've prepared dozens of
11 such petitions at least over the last five or six years?

12 A. Over the last 15 years?

13 Q. All right. Over the last 15 years, would you say you
14 prepared dozens of them?

15 A. Yes.

16 Q. Okay. Can you recall the details of each one of these
17 petitions to quash without spending a lot of time reading
18 through the documents?

19 A. No.

20 Q. All right.

21 We'll move on.

22 Inviting your attention to Exhibit 611.

23 A. (Reviewing document.)

24 Q. 611 is not in evidence. But -- And so it's not going to
25 be shown to the jury until you can authenticate it, and it's

1 really just to refresh your recollection.

2 I'm going to ask you some questions about documents you
3 provided to the Franchise Tax Board of California after
4 receiving documents from Mr. Grant, which he had received from
5 the Franchise Tax Board.

6 **MR. SAMPSON:** Your Honor, that's a leading question.
7 I object. Also he has not established that the witness's
8 recollection is -- that he doesn't have a recollection of
9 these things.

10 **THE COURT:** Sustained. There's no question pending.

11 **BY MR. COHAN:**

12 **Q.** Inviting your attention to Exhibit 612 --

13 **A.** (Reviewing document.)

14 Yes?

15 **Q.** Do you recognize Exhibit 612?

16 **A.** I had not seen this document before.

17 **Q.** Okay.

18 It refers to the Franchise Tax Board power of attorney?

19 **MR. SAMPSON:** Your Honor, the witness has just
20 testified that he doesn't -- has never seen it.

21 **THE COURT:** Exactly. It's not, then, appropriate for
22 you to read it into the record if he doesn't recognize it.

23 **BY MR. COHAN:**

24 **Q.** Sir, did you have a power of attorney with the Franchise
25 Tax Board in effect to represent Rick Grant in front of the

1 Franchise Tax Board for 2005 and additional years?

2 **A.** Yes.

3 **Q.** Are you sure you didn't receive this document which shows
4 that you had a power of attorney for Mr. Grant?

5 **MR. SAMPSON:** That's asked and answered, Your Honor.

6 **THE COURT:** Sustained.

7 **BY MR. COHAN:**

8 **Q.** Inviting your attention to Exhibit 613.

9 **A.** (Reviewing document.)

10 What exhibit number, I'm sorry?

11 **Q.** 613?

12 **A.** 613.

13 (Reviewing document.)

14 **Q.** Do you recognize Exhibit 613?

15 **A.** Yes.

16 **Q.** And is this a document you received from the Franchise Tax
17 Board?

18 **A.** Yes.

19 **Q.** And why did you receive this document from the Franchise
20 Tax Board, sir? Can you tell from the face of it?

21 **MR. SAMPSON:** Objection, asking why he received it.

22 **THE COURT:** Sustained.

23 **BY MR. COHAN:**

24 **Q.** Did you receive this document from Mr. Grant because you
25 had a power of attorney and you were being given notice of an

1 oral hearing where you were supposed to represent Mr. Grant?

2 **MR. SAMPSON:** Objection, leading.

3 **THE COURT:** Sustained.

4 **BY MR. COHAN:**

5 **Q.** Did you receive this document and maintain it yourself in
6 the ordinary course of Freedom Law School's business?

7 **A.** Yes.

8 **Q.** And did you respond to it?

9 **A.** At this moment, something that old, I cannot tell you for
10 sure if I did or did not. I don't know. I don't remember.

11 **Q.** Okay. But you received this document because it was
12 addressed to you, correct?

13 **A.** Yes.

14 **Q.** And it was from the Franchise Tax Board, right?

15 **A.** Yes.

16 **Q.** And it gave it -- gave you notice of an oral hearing where
17 you were supposed to be representing Richard T. Grant, Junior
18 for the taxable year 2003, correct?

19 **A.** Yes.

20 **MR. COHAN:** I move its admission, Your Honor.

21 **THE COURT:** Any objection?

22 **MR. SAMPSON:** Yes, Your Honor. It's not prepared by
23 the witness so I'm not sure that it satisfies the business
24 records exception to hearsay.

25 **THE COURT:** It's from the State Franchise Tax Board.

1 **MR. SAMPSON:** I also object because it's irrelevant.

2 **THE COURT:** Overruled. I'll allow it.

3 You may publish.

4 **MR. COHAN:** Thank you.

5 (Defendant's Exhibit 613
6 received in evidence)

7 (Pause in the proceedings.)

8 (Exhibit published.)

9 **MR. SAMPSON:** Your Honor, this is interlineated on
10 Mr. Cohan's copy.

11 **MR. COHAN:** Yes, it is. It has a circle around
12 Mr. Mottahedeh's name, and his address is underlined, Your
13 Honor.

14 **THE COURT:** Is that the only thing --

15 **MR. COHAN:** That's --

16 **THE COURT:** -- annotated?

17 All right. But, Mr. Cohan, you're aware from prior days
18 of this trial that you're supposed to use clean copies to show
19 the jury.

20 **MR. COHAN:** I am, Your Honor.

21 **THE COURT:** All right. So I'll -- I'll let this one
22 slide, but please make sure that you unredact or unedit any
23 future exhibits.

24 **MR. COHAN:** We have done our best, Your Honor. And I
25 apologize.

1 **THE COURT:** All right. Go ahead.

2 **BY MR. COHAN:**

3 **Q.** Now, we -- excuse me. This is 613.

4 So you received this document from Mr. Grant -- No, strike
5 that.

6 Did you receive this document directly from the Franchise
7 Tax Board?

8 **A.** Yes.

9 **Q.** And was 9582 Buttemere -- is it Buttermere? Spelled
10 Buttermere here?

11 **A.** It's pronounced Buttemere.

12 **Q.** Actually it's a misspelling, isn't it? It was Buttemere
13 is the address where you lived, correct?

14 **A.** Yes, it is misspelled.

15 **Q.** Okay. That's why I underlined it.

16 In any event, that was your address notwithstanding the
17 extra "R" in there, correct?

18 **A.** Yes.

19 **Q.** Okay. And do you recall that as of this point in time --
20 that is to say, as it shows, July 20th, 2005, you were
21 representing Rick Grant before the Franchise Tax Board,
22 correct?

23 **A.** Yes.

24 **Q.** Okay. Do you recall any of the details about the oral
25 hearing as to which you were given notice concerning Rick

1 Grant's tax for the taxable year 2003?

2 **A.** Not without looking at some documents. This is, you know,
3 over ten years old.

4 **Q.** Okay. That's right. All right. We'll move on.

5 **THE COURT:** Did you want this exhibit admitted?

6 **MR. COHAN:** I thought I moved its admission.

7 **THE COURT:** Okay. I just noticed there's a Social
8 Security number on it. That should be redacted.

9 **MR. COHAN:** Ah. There is indeed, Your Honor.

10 So my apologies. We'll have to redact it before we
11 actually move it into evidence.

12 **THE COURT:** Right.

13 **MR. COHAN:** So one line that shouldn't be there.

14 **THE COURT:** Well, it's admitted, but it's subject to
15 that redaction.

16 **MR. COHAN:** Very well.

17 I think my assistant and partner has made a note of that.
18 Thank you.

19 **Q.** Now, this shows that you were representing Mr. Grant with
20 respect to the Franchise Tax Board. Was this having to do
21 with a claim by the Franchise Tax Board that Mr. Grant owed
22 income taxes to the State of California for 2003?

23 **MR. SAMPSON:** Objection, leading.

24 **THE COURT:** Sustained.

1 **BY MR. COHAN:**

2 **Q.** Do you know the year for which you were representing Rick
3 Grant before the Franchise Tax Board referred to in Exhibit
4 613 without looking at it?

5 **A.** Without looking at the document, no, but the document says
6 the year.

7 **Q.** Okay.

8 Of your own recollection, have you continued to represent
9 Rick Grant before the Franchise Tax Board since at least as
10 far back as his 2003 tax year and continuing up for the next
11 at least 10 or 11 years?

12 **A.** I'm not sure exactly how long. I can say through 2009,
13 -10.

14 **Q.** Okay. We'll look at some more documents and see if they
15 refresh your recollection.

16 **A.** Um-hmm.

17 **Q.** Okay. Let's take a look at Exhibit 627.

18 **A.** (Reviewing document.)

19 **Q.** Do you have Exhibit 627 before you, sir?

20 **A.** Yes.

21 **Q.** And do you recognize Exhibit 627?

22 **A.** Yes.

23 **Q.** And is this a document that you actually prepared?

24 **A.** Yes.

25 **Q.** And does it represent that you are in fact appearing on

1 behalf of Richard Grant? And, again, it's got his Social
2 Security number on it. It needs to be redacted before we
3 admit it.

4 But you do recognize this document as one you prepared on
5 behalf of Richard Grant and filed with the Franchise Tax
6 Board, correct?

7 **A.** Yes.

8 **MR. COHAN:** Move its admission, Your Honor.

9 **THE COURT:** All right. Any objection?

10 **MR. SAMPSON:** No, Your Honor.

11 **THE COURT:** Admitted.

12 (Defendant's Exhibit 627 received in evidence)

13 **MR. COHAN:** May I publish, Your Honor?

14 **THE CLERK:** So you're not going to show the Social
15 Security number?

16 **MR. COHAN:** I can redact it right now.

17 It's barely legible anyway.

18 (Exhibit published.)

19 **BY MR. COHAN:**

20 **Q.** Okay. So I had just asked you whether you had any
21 independent recollection of the years for which you were
22 representing Mr. Grant before the Franchise Tax Board. And I
23 invite your attention to my underlining there on the third
24 line.

25 Again, I didn't have time to correct this, Your Honor.

1 And I didn't think that it did anything other than assist me
2 in finding the portion of this document.

3 **THE COURT:** I'll allow it, but this is the last one.

4 **MR. COHAN:** Okay.

5 **MR. SAMPSON:** Your Honor, I just note that this
6 highlights for the witness what his testimony should be.

7 **THE COURT:** Exactly.

8 I will allow it, but this is the last document that's been
9 annotated that I will permit.

10 **BY MR. COHAN:**

11 **Q.** Mr. Mottahedeh, as you sit here, do you remember without
12 looking at this document what you couldn't remember 30 seconds
13 ago, namely the years to which you were representing Mr. Grant
14 before the Franchise Tax Board?

15 **A.** Would you rephrase that question, please.

16 **Q.** No. I'll just ask another one.

17 Based on looking at this document, are you clear that you
18 were representing Rick Grant from 2000 at least through the
19 year 2010, as you can see by this Exhibit 627 that's now in
20 evidence?

21 **A.** Yes.

22 **Q.** All right. Now, there are some other people identified on
23 this document.

24 (Exhibit published.)
25

1 **BY MR. COHAN:**

2 **Q.** And, again, it says 9582 Buttemere Road, right?

3 **A.** Yes.

4 **Q.** -- Phelan, California. Was that the office where Freedom
5 Law School conducted its business and educational activities?

6 **A.** Yes.

7 **Q.** And when did you move to Florida from this address?

8 **A.** About two years ago.

9 **Q.** Okay. So as of April 20th, 2010, you were still at this
10 address?

11 **A.** Yes.

12 **Q.** And I see the names Tina James, Marci Kline, Adishian
13 Brooks -- I don't know if I'm pronouncing that right.

14 Who are these people?

15 **A.** These other individuals that were given power of attorney
16 by Mr. Grant.

17 **Q.** And were they working with you and under your direction,
18 Freedom Law School?

19 **A.** They were people from time to time would be perhaps if
20 needed assist me.

21 **Q.** So like contract assistants, not regular employees or --

22 **A.** In just rare occasions, if I'm not able to do something
23 myself, then I would need maybe somebody else to do something
24 quickly for me, then I would have these people do it.

25 **Q.** Okay.

1 All right. Inviting your attention if I may to Exhibit
2 637.

3 A. (Reviewing document.)

4 Q. Do you recognize Exhibit 637, sir?

5 A. Yes.

6 Q. What is Exhibit 637?

7 A. It's a request for a hearing prepared for --

8 Q. 637?

9 A. I'm sorry. I'm looking at 636. My mistake.

10 637. Oh, okay.

11 (Reviewing document.)

12 Q. Do you recognize it, first of all -- and I realize it's --
13 let's see. How many pages long is it?

14 Thirty-two pages.

15 A. Yes, I do recognize it.

16 Q. And how do you recognize it, sir?

17 A. Because it was the Board of Equalization decision in the
18 case of these individuals that I represented before the Board
19 of Equalization.

20 Q. And among those individuals, do you see the names Carol
21 Grant and Richard T. Grant, Junior?

22 A. Yes.

23 Q. And was this the decision in cases of people who are
24 listed on here, all of whom were your clients at the time?

25 MR. SAMPSON: Objection, Your Honor, leading.

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1 Equalization?

2 **A.** Yes.

3 **Q.** And what, if anything, is the relationship between the
4 State Board of Equalization and the Franchise Tax Board?

5 **A.** If the Franchise Tax Board makes a ruling against
6 somebody, you can appeal that decision to the Board of
7 Equalization, and that's what this was about.

8 **Q.** And so as to all of these different clients of yours,
9 including the Grants, you lost in front of the Board of
10 Equalization, didn't you?

11 **A.** Yes.

12 **Q.** Did Mr. Grant ever accuse you of misleading him or failing
13 to honor your promise to him in any way?

14 **A.** No.

15 **MR. COHAN:** Bear with me, if you would, please, Your
16 Honor, just a moment. I'm almost done with this witness.

17 (Pause in the proceedings.)

18 **BY MR. COHAN:**

19 **Q.** Mr. Mottahedeh, do you recall whether you wrote a letter
20 for Mr. Grant to sign and send to Senator Barbara Boxer from
21 the State of California, United States Senator?

22 **A.** Yes.

23 **Q.** And -- And another copy from Richard and Carol Grant to
24 Congressman George Miller?

25 **A.** Yes.

1 Q. And another letter to Senator Dianne Feinstein?

2 A. Yes.

3 Q. And can you -- Well, first of all, did you send the letter
4 to Mr. Grant for him to sign and send to his representatives
5 in Congress of the United States?

6 A. I send the letters to him to sign and mail back to me, and
7 I mailed it out for him.

8 Q. Okay. And can you summarize without even looking at this
9 letter -- it's the same letter to both senators and
10 Congressman Miller, correct?

11 A. Which exhibit are you speaking of?

12 Q. 534. I don't believe you have it before you. Do you need
13 it to refresh your recollection?

14 A. It would be nice, but I'm very familiar with the letter.

15 Q. Okay. Let's see how you do without even having your
16 recollection refreshed. This was sent sometime in 2005,
17 wasn't it?

18 A. Yes.

19 Q. Okay. So you still recall generally the contents?

20 A. I don't remember -- Yeah, I think it could have been 2003
21 if I remember right.

22 Q. Well --

23 A. But it could have been little bit later also.

24 Q. Have you prepared letters to senators and congressmen for
25 other of your students of Freedom Law School for them to send

1 that basically contain the same contentions and argument and
2 evidence for their senators and congressmen in other states?

3 **A.** Yes.

4 **Q.** Okay.

5 So can you summarize basically the contents of the letter?

6 **A.** Yes, I can.

7 **Q.** Please do.

8 **MR. SAMPSON:** Your Honor, he's summarizing -- I
9 object to the relevance of this.

10 **THE COURT:** Well, it's not entirely clear why it's
11 relevant. Can you perhaps elicit the information from him to
12 establish that before he reads it?

13 **MR. COHAN:** Sure.

14 **Q.** Is it fair to say that the contents of this letter
15 summarize all of the arguments and exhibits in evidence that
16 you discussed with Mr. Grant supporting the claim that there
17 is no law that requires filing of income tax returns?

18 **MR. SAMPSON:** Objection, Your Honor, leading.

19 **THE COURT:** It is leading, but I'm going to permit
20 it. We'd like an explanation.

21 **THE WITNESS:** Would you restate the question, please.

22 **MR. COHAN:** Your Honor, could I ask the court
23 reporter to read that back?

24 **THE COURT:** I'll read it.

25 **MR. COHAN:** Thank you.

1 **THE COURT:** "Is it fair to say that the contents of
2 this letter summarize all of the arguments and exhibits in
3 evidence that you discussed with Mr. Grant supporting the
4 claim that there is no law that requires filing of income tax
5 returns?"

6 **THE WITNESS:** No.

7 **BY MR. COHAN:**

8 **Q.** It's not?

9 **A.** No.

10 **Q.** Well, can you do a better job of summarizing the contents
11 of this claim (sic)?

12 **A.** Yes.

13 **Q.** Please do.

14 **A.** What I had Mr. Grant do, and I urge all individuals to do
15 so, is to ask their representatives in government about the
16 question of the income tax, that people that we've -- they are
17 supposed to represent to us in a legislative branch of
18 government, send them the written report and speech of the
19 former IRS Special Agent Joseph Bannister who in his report
20 conclude that there is no law requiring the average American
21 to file and pay their federal income tax.

22 And the government never responded or -- show him that he
23 was wrong when he was with them or afterwards.

24 **MR. SAMPSON:** Your Honor, I object to this narrative.
25 It's far beyond the question.

1 **THE COURT:** Sustained.

2 **MR. COHAN:** Well --

3 **Q.** Are these the contents of this letter that you wrote and
4 had Mr. Grant send back to you with his signature and that you
5 forwarded to the senators and the congressmen?

6 **A.** Yes.

7 **Q.** So you're not going to let --

8 **THE COURT:** Are you going to move the exhibit into
9 evidence?

10 **MR. COHAN:** Well, I will through this witness if the
11 court permits it. I was saving it for Mr. Grant, but he's
12 going to testify about it, so I'll move it into evidence now.

13 **THE COURT:** And where is it?

14 **MR. COHAN:** It is Exhibit 534, Your Honor.

15 (Pause in the proceedings.)

16 **MR. COHAN:** Yes, it's in the other binder, Your
17 Honor, that we gave you for Mr. Grant's testimony.

18 (Pause in the proceedings.)

19 **MR. COHAN:** It's actually the same letter addressed
20 to both -- Well, I should say each senator and Congressman
21 Miller, constituting exhibits --

22 **THE COURT:** And it's 534?

23 **MR. COHAN:** 534, 535, and 536.

24 **THE COURT:** Okay. Let me take a look.

25 (Pause in the proceedings.)

1 **THE COURT:** Okay. I've looked at it. Is there an
2 objection?

3 **MR. SAMPSON:** Your Honor, what's relevant in this
4 case is Mr. Grant's state of mind. These documents should not
5 be admitted for the truth.

6 **THE COURT:** I've already instructed the jury that all
7 of this witness's testimony with regard to their out-of-court
8 conversations are for the limited purposes of establishing the
9 defendant's knowledge and state of mind.

10 So with that, yes. I'll allow this document.

11 **MR. COHAN:** Thank you, Your Honor.

12 (Document published.)

13 **BY MR. COHAN:**

14 **Q.** All right. Mr. Mottahedeh, do you have Exhibit 534 before
15 you, sir? On the screen?

16 **A.** Yes.

17 **Q.** Do you recognize this document?

18 **A.** Yes.

19 **Q.** How do you recognize this document?

20 **A.** I wrote it for Mr. Grant.

21 **Q.** How many years ago did you write this for Mr. Grant?

22 **A.** Eleven years ago.

23 **Q.** Okay.

24 You testified you thought it was in 2003. You see the
25 date on it is 2005?

1 **A.** Yes.

2 **Q.** Are you sure it was 2003? You think it was 2005?

3 **A.** At this point, I'm not sure because that could be a typo
4 that -- maybe it was 2003. I think it was 2003, quite
5 frankly, because that's when he joined Freedom Law School, if
6 I remember right. And that's one of the first things I have
7 everybody do is to write to their congressmen, senators.

8 **Q.** Well, when you say you have them do it, is it mandatory or
9 voluntary that they sent these letters to their senators or
10 congressmen?

11 **A.** Well, it's -- when the person volunteer -- joins the
12 Freedom Law School and what we're doing, we trying to effect
13 change by informing our public servants of what's going on
14 with the U S. Constitution and income tax. And so it is a
15 standard part of the process.

16 **MR. SAMPSON:** Objection, Your Honor. The witness is
17 making an argument to the jury about the law.

18 **THE COURT:** The jury will be instructed by the court
19 as to what law applies to this case.

20 I'll allow the answer to stand as it provides context.

21 **MR. COHAN:** Thank you.

22 **Q.** Well, Mr. Grant and Mrs. Grant should have said, well,
23 we're not going to sign the letter, right? Refused, couldn't
24 they?

25 **A.** If they would have refused, I would have had a discussion

1 with them as to why it is very important and they do so.

2 Q. Okay. But you wouldn't force them to do so by any means,
3 would you?

4 A. No, I have no way of forcing anybody to do anything.

5 MR. SAMPSON: Objection, Your Honor. I believe it
6 misstates the testimony. I believe witness said that he
7 mailed them.

8 THE COURT: Why don't you clarify that for us.

9 MR. COHAN: Yes.

10 Q. You sent them, I believe you testified a few moments ago,
11 to Mr. and Mrs. grant for their signatures, correct?

12 A. Yes.

13 Q. Now, inviting your attention to the last page of Exhibit
14 534, there is what's called a Bates number in the lower
15 right-hand corner that identifies this as --

16 Excuse me. I want the signature page. I apologize.

17 (Exhibit published.)

18 BY MR. COHAN:

19 Q. Do you have RG triple zero 456 before you, sir?

20 (Reviewing document.)

21 I have before me what's on the screen.

22 Q. That's right. Look in the lower right-hand corner. Do
23 you see the RG triple zero 456?

24 THE COURT: No. It's not --

25 MR. COHAN: It's not on the screen. My bad.

(Exhibit published.)

BY MR. COHAN:

Q. Now do you see it?

A. Yes.

Q. Okay. Do you also see the signatures that appear above the names Richard T. Grant and Carol Grant?

A. Yes.

Q. Okay. So is it your recollection that Mr. Grant and Mrs. Grant signed this letter and sent it back to you?

A. Yes.

Q. Okay. And so you then, after having it returned to you, you mailed it to the addressees, the senators and Congressman Miller?

A. Yes.

Q. To your knowledge, have you ever received a response to this letter?

A. No.

Q. Did Mr. Grant and you ever discuss a response to this letter? Or the fact that there was no response to this letter?

A. Yes.

Q. And can you summarize those discussions about that for this jury?

A. I told him that until they could refute what's in the letter, then the contents of what the letter says must be

1 true.

2 **MR. COHAN:** Nothing further. Thank you.

3 **THE COURT:** Cross-examination?

4 (Pause in the proceedings.)

5 **CROSS-EXAMINATION**

6 **BY MR. SAMPSON:**

7 **Q.** Good morning, Mr. Mottahedeh.

8 **A.** Good morning.

9 **Q.** What medication are you taking?

10 **A.** I don't recall the exact name of it, but it's antibiotic
11 and a pain medication.

12 **Q.** And you took that today as well?

13 **A.** Yes.

14 **Q.** You took it yesterday?

15 **A.** Yes.

16 **Q.** Does it affect your memory?

17 **A.** No.

18 **Q.** Does it affect your ability to tell the truth?

19 **A.** No.

20 **Q.** Did you meet with Mr. Cohan on Wednesday?

21 **A.** Yes.

22 **Q.** For how long?

23 **A.** For about maybe a couple hours.

24 **Q.** Did you meet with him yesterday after court?

25 **A.** No.

1 Q. Did you meet with Mr. Grant?

2 A. No.

3 Q. Did you meet with Mrs. Grant?

4 A. After court?

5 Q. Yes.

6 A. No.

7 Q. Did a process server come and serve you with a subpoena in
8 this case?

9 A. No.

10 Q. So you just agreed to come and testify?

11 A. The letter was mailed to me by Mr. Cohan, and I agreed to
12 testify -- come and testify.

13 Q. And you came from Florida?

14 A. Yes.

15 Q. How did you get here?

16 A. I flew to Southern California and after being there for a
17 few days, I drove up here.

18 Q. Has anyone other than you agreed to pay for the flights?

19 A. No.

20 Q. So this trial is free advertising for you, isn't it?

21 A. What do you mean?

22 Q. Is it free advertising for Freedom Law School?

23 A. How would it be free advertising for Freedom Law School?

24 Q. I'm asking a question.

25 THE COURT: Excuse me, Mr. Mottahedeh. Just answer

1 his questions.

2 **THE WITNESS:** I'm not sure if I'm understanding your
3 question about -- what do you mean by a trial is advertising
4 for Freedom Law School?

5 **BY MR. SAMPSON:**

6 **Q.** Are you publicizing your appearance here today?

7 **A.** Yes, I am.

8 **Q.** It's on your website?

9 **A.** Yes.

10 **Q.** And that website says that the government will be on trial
11 in this case; is that right?

12 **A.** Yes.

13 **Q.** And you have a financial interest in the outcome of this
14 case; isn't that right?

15 **A.** No.

16 **Q.** If Mr. Grant is in -- is acquitted, will you tout this as
17 a success of Freedom Law School?

18 **A.** Yes.

19 **Q.** Now, Exhibit 515, do you recall the representation
20 agreements, the representation letters that were -- were sent
21 to Mr. Grant over the years that we had discussed yesterday in
22 court?

23 **A.** You mean the exhibit here?

24 **Q.** Yes, sir.

25 **A.** Yes.

1 **MR. SAMPSON:** Your Honor, I'm showing 515.

2 **THE COURT:** Is it in evidence?

3 **MR. SAMPSON:** Yes, I believe it is.

4 **THE CLERK:** Yes.

5 **MR. SAMPSON:** 515.

6 (Pause in the proceedings.)

7 **MR. SAMPSON:** I believe it was --

8 **THE CLERK:** It's in. I just told the judge.

9 **MR. SAMPSON:** Thank you.

10 (Exhibit published.)

11 **BY MR. SAMPSON:**

12 **Q.** Now, the agreement between Freedom Law School and
13 Mr. Grant includes some representation, paragraph 2. Do you
14 recall that?

15 **A.** Yes.

16 **Q.** Is your appearance here today part of that representation?

17 **A.** No.

18 **Q.** So you manage a church; is that right?

19 **A.** Yes.

20 **Q.** Are you the rabbi or the pastor of that church?

21 **A.** I'm the founder/liberator of the church.

22 **Q.** Liberator?

23 **A.** Yes.

24 **Q.** And that's called the Freedom Church?

25 **A.** Yes.

1 Q. And Freedom Law School is under the umbrella of that
2 church; is that right?

3 A. Yes.

4 Q. You're not a lawyer, Mr. Mottahedeh?

5 A. I'm not a bar member lawyer; that's correct.

6 Q. You're not a member of any bar anywhere?

7 A. No, I'm just self-taught.

8 Q. You're not a C.P.A., are you?

9 A. No, I'm not.

10 Q. Your law school is not accredited, is it?

11 A. It's not accredited by any government agency; that's
12 correct.

13 Q. Or any association of lawyers.

14 A. That's correct.

15 Q. And it doesn't confer degrees, does it?

16 A. No, it does not.

17 Q. And there's no campus, is there?

18 A. No, there is not.

19 Q. Other than May of 2003, have you ever met -- have you met
20 Mr. Grant in person before this trial?

21 A. Yes.

22 Q. How many times?

23 A. Just a few. Maybe about three times, perhaps,
24 approximately.

25 Q. And in May 2003, what was the event at which you met

1 Mr. Grant?

2 **A.** I think it was 2002 Tax Freedom Rally of the Free
3 Enterprise Society in San Jose, California.

4 **Q.** You testified yesterday that you weren't sure whether you
5 met him in 2003; that is correct?

6 **A.** 2003? Whether he came in person to see me or it was by --
7 everything is done by telephone, I don't recall that at this
8 moment, no.

9 **Q.** Did Mr. Grant ever send you K1's from his business?

10 **A.** I don't recall. I don't think so.

11 **Q.** Did he send you documentations of his income and expense?

12 **A.** No.

13 **Q.** You testified that you filed a power of attorney for
14 Mr. Grant with the Franchise Tax Board; is that right?

15 **A.** Yes.

16 **Q.** And you represented him for numerous years?

17 **A.** Yes.

18 **Q.** And you knew that Mr. Grant was not paying state income
19 taxes; is that right?

20 **A.** Yes.

21 **Q.** You never had a power of attorney with Mr. Grant with the
22 IRS, did you?

23 **A.** That's correct.

24 **Q.** You tell clients that you're not an attorney, don't you?

25 **A.** I let everybody know that I'm not an attorney.

1 Q. And you tell them that you're providing them information
2 but not legal advice; is that right?

3 A. Yes.

4 Q. Now, the Board of Equalization exhibit that we discussed,
5 I won't show it, but that was a decision that assessed
6 frivolous appeal penalties against Mr. Grant and his wife; is
7 that correct?

8 A. Without looking at the document, I cannot tell you for
9 sure.

10 Q. Do you recall whether in 2014, the Board of Equalization
11 assessed frivolous appeal penalties against Mr. Cohan and his
12 wife?

13 A. Without looking at the paper, no, I could not tell.

14 Q. You couldn't testify from your own memory to that?

15 A. I believe they probably did, but I could not tell you for
16 sure.

17 Q. The letters to the Congress people that we just -- that
18 you just discussed with Mr. Cohan, is that part of a package
19 that Freedom Law School sells?

20 A. It's part of the Royal Freedom Package.

21 Q. What is the Freedom Preparation Package?

22 A. It's educating people about the law and their rights. In
23 other words, the average American like myself, I being -- had
24 a four-year degree from university, I was never taught about
25 the law and my rights.

1 **MR. SAMPSON:** Objection, Your Honor. Move to strike.
2 It's not responsive.

3 **THE COURT:** Sustained. Jury should disregard the
4 last answer.

5 **BY MR. SAMPSON:**

6 **Q.** Is -- Are the letters that were discussed to the Congress
7 people, are those part of the Freedom Preparation Package?

8 **A.** They're part of the -- No, they're not. They're part of
9 the redress of grievance part of the program.

10 **Q.** It's part of -- is that a different package?

11 **A.** Part of the same package.

12 **Q.** You warn clients that they could end up in jail, correct?

13 **A.** I warn everybody they could end up -- that everybody could
14 end up in jail.

15 **Q.** For tax crimes?

16 **A.** Yes.

17 **Q.** And you tell clients to make up their minds on their own,
18 correct?

19 **A.** No.

20 **Q.** About the tax laws?

21 **A.** I think you're trying to box me in a way that does not let
22 me explain my position.

23 **Q.** I'm asking you yes or no questions.

24 **A.** Yes.

25 **THE COURT:** Yes, you have to answer --

1 **THE WITNESS:** Sure.

2 **THE COURT:** -- the questions as he -- Excuse me.

3 **THE WITNESS:** I'm sorry.

4 **THE COURT:** -- as he poses, not as you wish they were
5 given.

6 **THE WITNESS:** Sure.

7 **THE COURT:** Okay.

8 **THE WITNESS:** Say it again, please.

9 **BY MR. SAMPSON:**

10 **Q.** You tell clients to make up their own mind about the tax
11 laws; is that correct?

12 **A.** Yes.

13 **Q.** You tell them to go to a law library.

14 **A.** Yes.

15 **Q.** And you tell people that they could be convicted for
16 failure to file and failure to pay, correct?

17 **A.** Yes.

18 **Q.** And class 8 on your set of DVD's is a mock federal
19 criminal trial, correct?

20 **A.** Yes.

21 **Q.** For federal criminal tax charges?

22 **A.** Yes.

23 **Q.** And you go through what a defendant does in that kind of a
24 trial?

25 **A.** Yes.

1 Q. And that's part of the package that you sent to Mr. Grant?

2 A. Yes.

3 Q. Your package actually discusses how many people are
4 convicted of tax crimes in this country, doesn't it?

5 A. Yes.

6 Q. The letters to Congress that you write, they don't say --
7 they don't say that the person sending the letter isn't going
8 to pay their taxes until the Congress person answers, do they?

9 A. No, they don't.

10 MR. SAMPSON: Court's brief indulgence.

11 (Pause in the proceedings.)

12 BY MR. SAMPSON:

13 Q. When you testified that you told Mr. Grant certain things
14 earlier on direct with Mr. Cohan, what did you mean by "told
15 Mr. Grant"?

16 Does that mean that you told him in the documents you
17 prepared?

18 A. Means I talked to him probably -- most likely on
19 telephone.

20 (Off-the-record discussion.)

21 BY MR. SAMPSON:

22 Q. Did you have difficulty communicating with Mr. Grant?

23 A. No.

24 Q. Did you -- Did he ramble on and on when you talked to him
25 on the phone?

1 **A.** No.

2 (Off-the-record discussion.)

3 **BY MR. SAMPSON:**

4 **Q.** And you tell your clients that your best advice if they're
5 not going to file their tax returns is to pay the tax,
6 correct?

7 **A.** Restate the question, please.

8 **Q.** You tell clients that your best advice to them if they're
9 not going to file tax returns is to pay the tax and not file,
10 correct?

11 **A.** No.

12 **Q.** You tell them that if they hide their money while IRS is
13 disputing taxes with them, they could be convicted of tax
14 evasion, correct?

15 **A.** Yes.

16 **MR. SAMPSON:** No further questions.

17 **THE COURT:** Any redirect?

18 **MR. COHAN:** Just briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. COHAN:**

21 **Q.** I believe you testified yesterday -- excuse me -- that you
22 have been operating Freedom Law School since 1996; is that
23 right?

24 **A.** Yes.

25 **Q.** Have you been contacted by the Internal Revenue Service or

1 the Department of Justice basically threatening to close you
2 down if you don't stop?

3 **MR. SAMPSON:** Your Honor, that's beyond the scope.

4 **THE COURT:** Sustained.

5 **BY MR. COHAN:**

6 **Q.** Have you had communications with the IRS about being
7 required to stop disseminating your materials and responding
8 with that?

9 **MR. SAMPSON:** Same --

10 **BY MR. COHAN:**

11 **Q.** Those communications?

12 **MR. SAMPSON:** Same objection, Your Honor.

13 **THE COURT:** Sustained.

14 **MR. COHAN:** You're not allowing me to go into this
15 area?

16 **THE COURT:** Yes, I'm not allowing you to go in that
17 area.

18 **MR. COHAN:** Very well, Your Honor. Nothing further.

19 **THE COURT:** Anything else, counsel?

20 **MR. SAMPSON:** No, Your Honor.

21 **THE COURT:** All right. Mr. Mottahedeh, you may step
22 down. Thank you.

23 Next witness, please.

24 **MR. COHAN:** Defense calls Richard T. Grant, Junior to
25 the witness stand.

1 (Pause in the proceedings.)

2 **THE CLERK:** Please raise your right hand.

3 **RICHARD T. GRANT, JR.,**

4 called as a witness for the DEFENDANT, having been duly sworn,
5 testified as follows:

6 **THE CLERK:** Please be seated. Please state your full
7 name and spell your last name for the record and speak clearly
8 into the microphone.

9 **THE WITNESS:** Richard T. or Thomas Grant, Junior,
10 G-r-a-n-t.

11 **DIRECT EXAMINATION**

12 **BY MR. COHAN:**

13 **Q.** Good morning, Mr. Grant.

14 **A.** Good morning. Excuse my throat.

15 **Q.** Do you have some water there?

16 **A.** Ah.

17 **MR. COHAN:** May I approach with a (sic) exhibit
18 binder, Your Honor?

19 **THE COURT:** Yes.

20 (Pause in the proceedings.)

21 (Off-the-record discussion.)

22 **MR. COHAN:** Excuse me.

23 (Pause in the proceedings.)

24 **BY MR. COHAN:**

25 **Q.** Good morning, Mr. Grant.

1 **A.** Morning.

2 **Q.** So you've heard a lot of testimony. I want to briefly ask
3 you to summarize where you were born and grew up and educated
4 up until the time you attended college.

5 **MR. SAMPSON:** I object to the extent it calls for a
6 long narrative about the defendant's life.

7 **THE COURT:** Yeah. I -- We don't need --

8 **MR. COHAN:** I haven't --

9 **THE COURT:** -- narrative.

10 **MR. COHAN:** -- asked a question yet, Your Honor, at
11 this time.

12 **THE COURT:** You didn't?

13 **MR. COHAN:** I'm just getting --

14 **THE COURT:** "I want you to briefly summarize," and
15 there's a question mark. Our mistake.

16 **MR. COHAN:** My mistake.

17 **THE COURT:** Ask the full question.

18 **MR. COHAN:** Very well.

19 **Q.** Where were you born, sir?

20 **A.** Portsmouth Naval Hospital, Virginia.

21 **Q.** And how do you know that?

22 **A.** It's on my birth certificate.

23 **Q.** Okay. But you don't really remember it, do you?

24 **A.** No.

25 **Q.** Okay.

1 What's your earliest memory growing up?

2 **A.** I have some memories of growing up and living in
3 Brunswick, Maine.

4 **Q.** And how old were you when you were living in Brunswick,
5 Maine?

6 **A.** Between about three and four.

7 **Q.** Okay. What do you remember?

8 **A.** Nature primarily. The deep snows and the buttercups and
9 wandering in the -- in the woods right behind my house. These
10 days, I don't think they'd let a little kid stray too far, but
11 I'm sure I was being supervised.

12 **Q.** Okay. So where did you move after Maine?

13 **A.** From there, I moved to Monterey, California.

14 **Q.** Okay. And when you say you moved, you moved with your mom
15 and dad?

16 **A.** Yes.

17 **Q.** And your brothers are Randy and Ron, correct?

18 **A.** Yeah. Ron wasn't born at the time, though.

19 **Q.** Okay. Ron's nine years younger than you?

20 **A.** Correct.

21 **Q.** Okay. So how old were you when you were in Monterey,
22 California?

23 **A.** Between four and up to maybe close to five.

24 **Q.** Okay. And do you recall what you were doing there when
25 you were four and five years old?

1 **A.** Mostly nature. I was an outdoor kid who liked to roam
2 eucalyptus groves and look for wildlife.

3 **Q.** Okay. And where did you move next after you were roughly
4 five years old?

5 **A.** Silver Springs, Maryland.

6 **Q.** Is that where the triplets lived across the street?

7 **A.** Yes, there were seven boys, and I, once again, made some
8 bonds with them. And it was an -- kind of an outdoor explore
9 the world kind of thing.

10 **Q.** Okay. And how long did you live in Silver Springs,
11 Maryland before you moved again?

12 **A.** Approximately a year or so. Maybe two.

13 **Q.** Where to next?

14 **A.** From there I moved to Key West, Florida, as I recall.

15 **Q.** And how old were you when you lived in Key West, Florida?

16 **A.** Five to six to -- maybe seven or so.

17 **Q.** Okay. And where did you move next?

18 **A.** To San Diego, California.

19 **Q.** And how old were you when you lived in San Diego,
20 California?

21 **A.** I was there third grade, fourth -- part of third, fourth,
22 and fifth grade. I'd have to do the calculations. But --

23 **Q.** Okay. You don't need to now.

24 So to the best of your recollection, where did you move
25 next?

1 **A.** Virginia Beach, Virginia.

2 **Q.** And how old were you when you lived in Virginia Beach,
3 Virginia?

4 **A.** Fifth -- well, sixth, seventh, eighth, ninth -- I actually
5 lived there for almost six years.

6 **Q.** Okay.

7 And you heard your brother testify your father was in the
8 Navy?

9 **A.** Yes.

10 **Q.** Is that correct?

11 **A.** Quite a few moves.

12 **Q.** Okay. So -- Okay. Where did you go after Virginia Beach?

13 **A.** I had -- I was uprooted in my senior year of high school.
14 I didn't get to attend senior year, so I went to Evanston,
15 Illinois on the Great Lakes on the -- Lake Michigan.

16 **Q.** Okay. And that's where you graduated --

17 **A.** Yes.

18 **Q.** -- from high school?

19 **A.** Yes.

20 **Q.** What year?

21 **A.** 1971.

22 **Q.** Okay. And then did you continue your education?

23 **A.** Yes, I went to Old Dominion University in 1971, starting
24 in 1971.

25 **Q.** And did you graduate?

1 **A.** Yes.

2 **Q.** What did you -- Strike that.

3 Did you get a degree in something?

4 **A.** I got a degree in biology with a kind of a minor although
5 it wasn't official in Marine Science and also Education.

6 **Q.** Okay. And did you meet anyone there who became important
7 to you?

8 **A.** Yes, the first day of orientation, I met my wife in June
9 of -- of 1971.

10 **Q.** And did you get married eventually?

11 **A.** Eventually. Number of years later in 1977.

12 **Q.** Okay. So during the time that you were in college, did
13 you date the lady who became your wife Carol?

14 **MR. SAMPSON:** Objection just based on relevance, Your
15 Honor.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** Yes. I dated her.

18 **BY MR. COHAN:**

19 **Q.** Okay. And did you and your brother Randy discuss
20 purchasing an airplane that we've heard some testimony about
21 before it was actually purchased?

22 **A.** Yes. I had located a -- a little advertising bit in a --
23 in a trade -- trade publication, and he seemed to share the --
24 the vision of what I would propose soon.

25 **Q.** Well, what was it that the two of you were doing -- Strike

1 that.

2 What was the purpose of purchasing the airplane?

3 **A.** Well, I had studied marine science, marine biology and had
4 participated in a high school biology group special summer
5 program and then subsequently was a lab assistant, and -- and
6 that's where I initially found the aircraft in 1975, '76. I
7 mean, located the -- the "for sale" sign.

8 **Q.** Okay. And who saw the airplane first between you and your
9 brother Randy?

10 **A.** My brother came out. He got a -- I think he gave extra
11 blood and flew out from his -- wherever duty point was and
12 evaluated the airplane.

13 **Q.** Okay. This is while Randall was still in the Navy?

14 **A.** Correct.

15 **Q.** Okay. So when did you and Randall agree and actually buy
16 the airplane?

17 **A.** I believe it was about 1976.

18 **Q.** Okay. And did you -- Strike that.

19 When was the first time that you actually saw the
20 airplane?

21 **A.** I came out ten days before my wedding. We -- I think we
22 converged. We flew to where my parents lived in Dallas,
23 Texas -- Irving, Texas. And then my dad provided a car, gave
24 us a car, and we drove pretty much non-stop to see it in 1977.

25 **Q.** Okay. And when you say "we," who was with you?

1 **A.** Oh, that was brother Randy and brother Ron.

2 **Q.** Okay. And when you arrived, was the -- the flying boat in
3 Richmond?

4 **A.** Yes. It was on the waterfront.

5 **Q.** Okay. And the jury's already seen pictures of it and
6 knows what it looked like.

7 So you -- you got to work along with your brothers on that
8 airplane, right?

9 **A.** Well, actually we came out for just a brief period. I
10 drove back non-stop -- you know, 56 hours nonstop to get
11 married 'cause I -- that was -- my wife really was indulgent.
12 You know, I had this passion, and she, you know, didn't
13 complain. She was trying to prepare for the wedding.

14 But anyway, so we drove back non-stop 56 hours, my three
15 brothers -- I mean, myself and my two brothers, the three
16 brothers, and drove back non-stop.

17 **Q.** Okay. And so you got married when?

18 **A.** October 13th -- I better remember this -- of 1977.

19 **Q.** Okay. And then did you and your brother buy a -- an old
20 school bus?

21 **A.** Yeah, well, it wasn't very expensive. They were usually
22 used up pretty well by the school systems, and then sometimes
23 churches used them for another few years. And by that time,
24 they were kind of on their last legs, but for \$500, you could
25 buy a school bus.

1 Q. So did you buy a school bus for \$500?

2 A. Yes.

3 Q. And what was the purpose for which you and your brother
4 spend \$500 for an old school bus?

5 A. Well, we outfitted it, painted it, stripped out seats and
6 tried to make it in kind of a little RV with some little tiny
7 galley, maybe a little desk for an office, and bunk beds, and
8 a little shower that was fed from a 50-gallon blue water tank
9 that was mounted on top.

10 Q. Now, did you and your brother drive across country in that
11 refurbished school bus that you just described?

12 A. Actually not. My wife and myself and my youngest brother,
13 who we would swing through Texas to visit my parents, of
14 course, and then we would go from there. But Randy was in the
15 Navy at the time and didn't really join us until 1980,
16 primarily.

17 I don't know if he made it out any of those summers from
18 1978, '79, and then we came out full-time in 1980.

19 Q. Okay. Did you make cross-country trips in that bus with
20 some other people?

21 A. Oh, yes.

22 Q. In the summers?

23 A. Yes.

24 Q. And --

25 A. There were students who were very enthusiastic about the

1 concept of a flying laboratory, is what the aircraft was for,
2 an oceanographic program that we initially called PREFLITE
3 Oceanographic and then later Sea Flight Oceanographic 'cause
4 people, you know, didn't understand what PREFLITing always
5 meant, but sea flight kind of implied a flying oceanographic
6 laboratory.

7 Q. Was "PREFLITE" some sort of acronym that you created to --
8 to sort of make it sound really good?

9 A. Yeah. It was -- at this -- bear with me. I hope I can
10 get it right. Program for research and education through
11 flying long-range investigations and transocean exploration.

12 Q. I won't ask you to repeat that.

13 So that was your initial name for the -- the idea behind
14 buying the flying boat?

15 A. Yes.

16 Q. Okay.

17 A. May have a brochure somewhere that shows something I wrote
18 up about the concept.

19 Q. Okay.

20 We'll just move past that --

21 A. Okay.

22 Q. -- brochure, 'cause it's too late for that now.

23 A. Okay.

24 Q. That was -- Well, strike that.

25 So you mentioned students. What students or -- to whom

1 are you referring when you say "students"?

2 **A.** Ex-students because after I graduated in '75, I did a
3 brief stint for -- with student teaching, and then for the
4 years in between during the -- during the year, I was a
5 teacher at -- at the -- at the very Virginia Beach public high
6 school in what's called First Colonial High School, but I did
7 also some substitute teaching elsewhere.

8 **Q.** Was that in 1976?

9 **A.** That was -- Well, substitute teaching in '76, and then I
10 started teaching I believe in '77, '78, and '79, and then I
11 resigned before the summer of '80.

12 **Q.** Okay. So in the summers of '77, '78, and '79, did you
13 travel across the United States in that refurbished old school
14 bus with some of your biology students from the high school?

15 **A.** Yeah, they -- some of them actually chipped in, you know,
16 because we couldn't afford all the food and whatnot, and we
17 kind of made it a little adventure cross-country, stopping in
18 a few national parks and so on.

19 But, yeah, it was also an adventure in fixing things on
20 the way. Generator. Alternator brackets would break.
21 Windshield wipers would fall off. Engine parts would break.
22 Batteries would -- anyway it was -- you know, it was, like, a
23 Stanley Steamer. It kind of was a struggle to get across
24 country.

25 **Q.** But you made it all three summers, correct?

1 **A.** All three summers.

2 **Q.** And you worked -- you and your brother and the students
3 all worked on that airplane, the flying boat?

4 **A.** Well, once we arrived full-time and Randy joined us, yes,
5 but we worked around the clock for the -- when we arrived
6 here, we would just rotate shifts, and we were trying to clean
7 the corrosion off the hull and -- and repaint -- prime and
8 paint it. We wet-sanded some areas, which we basically -- our
9 fingertips were bleeding. And we -- it was -- it was a lean
10 times. We ate a lot of macaroni and cheese and Hamburger
11 Helper.

12 **Q.** Okay. And are you talking about the summers --

13 **A.** Yes.

14 **Q.** -- of '77, '78, and '79?

15 **A.** (Nods head.)

16 **Q.** So then during the school years in '77, '78, and '79, you
17 were a biology teacher in high school; is that right?

18 **A.** Yes.

19 **Q.** Okay. And then did you say that you resigned in -- at the
20 end of --

21 **A.** Well, it was during the -- the year -- one of the
22 semesters just before 1980 when we came out full-time.

23 **Q.** Okay. And who came out full-time?

24 **A.** My wife, myself, and a few students -- actually they
25 weren't students. Some of them just -- people would like to

1 come to California, has had a certain caché, coming to
2 California. People, you know, really idolized the ideas back
3 on the East Coast. I mean, it was an easy sell as far as, you
4 know, can we, you know, get a few people could come with us.
5 We couldn't take that many, so the first ones who expressed
6 interest and we knew and were compatible with, we brought
7 along.

8 **Q.** Okay. So in 1980, was it the same bus or had you gotten a
9 replacement --

10 **A.** Yeah, we -- we started out with a 1955 International
11 Harvester, and then we got a 1965 International --
12 International Harvester because the other one just -- the
13 engine just blew, and we couldn't, you know, fix it ourselves.

14 **Q.** Okay. So you and Carol and a few students or other folks
15 who wanted to make the trip to California came out in 1980.

16 And where did you stop and -- Well, you stopped where
17 the -- where the flying boat was that you were still --

18 **A.** Yeah, I think we showed some photos of it right alongside.

19 **Q.** Okay. Well, I don't think we need look at the photos
20 again. Everybody saw them.

21 So for five and a half years you lived there in the bus?

22 **A.** Yes.

23 **Q.** And --

24 **A.** Right alongside the project. Again, we were kind of poor
25 as church mice maybe, but we -- my brother joined us in

1 that -- in that summer full-time as I recall.

2 Q. Okay.

3 A. And we worked -- like I said, we were continuing to work
4 each summer, and that was the beginning of the full-time
5 effort.

6 Q. okay. Now, I want to show you what's been marked for
7 purposes of --

8 Do you have your binder up there?

9 A. Yes, I do.

10 Q. Would you take a look at Exhibit 504, please.

11 A. (Reviewing document.)

12 Oh, yeah. There's our description of the beginning effort
13 out there. That was sort of the seed of -- even of our
14 company eventually.

15 Q. And this was something that you wrote yourself or you had
16 somebody else write?

17 A. I recall writing this myself.

18 Q. Okay. And it's a two-page document?

19 A. Yep. It's really expressing our interest and concern for
20 the ocean.

21 Q. Okay.

22 A. It was sort of ahead of its time a little bit because
23 about nine months after we got the aircraft, Jacques Cousteau
24 or Philippe Cousteau, a famous ocean explorer, had acquired a
25 PBY, which was a similar but much smaller, relatively

1 speaking, airplane.

2 **MR. COHAN:** Your Honor, I'd move the admission of
3 Exhibit 504.

4 **THE COURT:** Any objection?

5 **MR. SAMPSON:** Well, Your Honor, relevance. It makes
6 no fact of consequence in this case more or less likely.

7 **THE COURT:** Yes. I -- What's the relevance?

8 **MR. COHAN:** It was and still is Mr. Grant's dream,
9 and I think it's relevant to his intent.

10 **THE COURT:** His intent on not paying --

11 **MR. COHAN:** Yes.

12 **THE COURT:** -- taxes? I don't understand.

13 **MR. COHAN:** His mental condition.

14 **THE COURT:** Okay. All right. I'll allow it.

15 (Defendant's Exhibit 504 received in evidence)

16 (Exhibit published.)

17 **BY MR. COHAN:**

18 **Q.** Sir, is this a copy of your summary that you wrote
19 yourself?

20 **A.** Yes, a part of it. I think it continues on another page.

21 **Q.** Right. I will turn the page.

22 (Exhibit published.)

23 **BY MR. COHAN:**

24 **Q.** Who's in the picture?

25 **A.** That's Mr. -- actually became Dr. Nick Savage. He's my

1 mentor and was an exceptional instructor, one of those that
2 maybe if you're lucky to have once. He could entertain and
3 educate at the same time. And he was funny and -- anyway
4 special to me and hundreds and hundreds of other students.

5 **Q.** Okay. So this dream that you had that is reflected in the
6 exhibit that we just admitted, have you -- well, you continued
7 to pursue that dream and worked on that airplane. We heard
8 your brother testify about it. But I want to ask you a few
9 more questions about it.

10 You worked on it beginning in 1977 and when did you
11 basically finish everything but the engines? Do you recall
12 what year?

13 **A.** I was still attempting to locate engines anywhere around
14 the world and the last known place for these Bristol Hercules
15 sleeve-operating engines was in New Zealand, the South Island.
16 And I actually made two trips trying to get parts. It was
17 each a month. And, you know, it was a -- it was a tough trip.

18 I had to leave my family behind and -- and go out into the
19 brush. They call them the prickles down there, the blue --
20 the blackberries and such, and try to get these -- extract
21 these engines.

22 Unfortunately, they ended up being the wrong series. And
23 with the FAA, everything has to be exactly -- exactly as
24 specified for that aircraft.

25 **Q.** So --

1 **THE COURT:** Excuse me, counsel. It's time for our
2 break.

3 **MR. COHAN:** Thank you.

4 **THE COURT:** Ladies and gentlemen, you're excused for
5 15 minutes.

6 (The following proceedings were heard out of the presence
7 of the jury:)

8 **THE COURT:** All right, Mr. Grant. You may step down.
9 Counsel, I wanted to bring to your attention --

10 **MR. SAMPSON:** I just note -- Well, Mr. Mottahedeh is
11 still in the room, but I guess he's not testifying so I
12 just --

13 **MR. COHAN:** He's done.

14 **THE COURT:** All right.

15 **MR. SAMPSON:** Okay. Anyway --

16 **THE COURT:** He may not be re-called, obviously --

17 **MR. COHAN:** No, no intention --

18 **THE COURT:** -- in the courtroom.

19 I received a note from Juror No. 5, Mr. Allen Smith. And
20 he says just letting you know I have a medical appointment on
21 Monday, June 20th at 2:45 p.m. in Berkeley. I need to leave
22 for this by 2:15 at the latest. I don't expect this is a
23 problem if we are released by 1:30 as usual.

24 Although Monday is supposed to be a full day, and I told
25 them the last day would be a full day. Anyway he says, I

1 cannot reschedule this. It is a referral from an ENT doctor
2 six weeks ago before the jury summons and from my primary care
3 physician two months ago. I have chronic sinusitis which will
4 require surgery to remove polyps and correct a deviated septum
5 but first I must see an allergist on Monday. Appointments are
6 six weeks plus out, and I have travel commitments after that.

7 So at some point before he's excused, we'll explore this
8 with him. But this does present a problem. Does -- It does
9 present a problem. We cannot conclude by 1:30 on Monday. Or
10 even by 2:00. That would be about the latest.

11 **MR. COHAN:** Well --

12 **THE COURT:** Unless we are able to conclude the
13 evidence today. And then the jury could come back -- we can't
14 conclude the trial including all of the arguments and
15 instructions, is what I'm talking about.

16 Jury deliberations is within the jury -- is within the
17 jury's control. I'm a little concerned about losing another
18 juror before they commence deliberations because who knows
19 what will happen during that period of time, so that's an
20 issue. You all need to give it some consideration.

21 If we adjourned at 1:30 or 2:00 on Monday, I'm just afraid
22 we would not have everything in, and I'm a little concerned
23 because several of the jurors have expressed to Nichole their
24 surprise that we're going over to Monday in any event.

25 All right. I just share that with you all.

1 **MR. SAMPSON:** Thank you, Your Honor.

2 **THE COURT:** Okay.

3 (Recess taken at 10:19 A.M.; proceedings resumed at 10:34
4 A.M.)

5 (The following proceedings were heard in the presence of
6 the jury:)

7 **THE CLERK:** Please be seated and come to order.

8 **THE COURT:** All right. Please continue.

9 **MR. COHAN:** Thank you.

10 **Q.** Okay, Mr. Grant. Back to the airplane for a minute.
11 Airplane No. 1. Why didn't somebody check to make sure you're
12 going to be able to get engines for this thing before you
13 spend ten years and thousands of hours and piles of money
14 getting it ready to fly?

15 **A.** I think we were young. I don't want to say anything about
16 any -- you know, I mean, it was just we -- we had a vision, a
17 dream. And, you know, we could make anything happen.

18 When you're young, you think anything can happen. I mean,
19 you believe that -- if it's money, maybe money should show up.
20 If it's parts -- but I pretty much discovered that there were
21 no such parts in sufficient quantity to -- to make that fly as
22 it sits.

23 I mean, you can do anything with money. You can -- you
24 can retool and build engines. You can put turbines on there
25 but it costs a lot of money. That's all.

1 Q. Okay. Do you know what magical thinking is?

2 A. No. Not really.

3 Q. Well, like imagining that money and engines will show up
4 when there's no objective basis for believing that's going
5 happen?

6 MR. SAMPSON: Objection, Your Honor. He's describing
7 what the witness said. He doesn't really know about --

8 THE COURT: Yes. Sustained.

9 BY MR. COHAN:

10 Q. Well, after about ten years, you realized that you were
11 never going to be able to get the flying boat off the ground
12 or the water, correct?

13 MR. SAMPSON: Objection, Your Honor, leading.

14 THE COURT: I'm going to permit it. It is leading.
15 But --

16 THE WITNESS: I actually didn't necessarily.

17 MR. COHAN: Wait.

18 THE COURT: It's fine. Overruled.

19 THE WITNESS: I -- I didn't necessarily give up on
20 the dream. And it -- as it sits even at the Oakland Airport,
21 many years later, I think there's a plaque on the -- on the
22 boarding thing that says owned by Rick and Randy Grant and
23 something referencing wishing to make it fly or doing
24 something -- I -- it's been a long time since I've gone and
25 looked at that. But I wanted it to be represented that way

1 even though it was on display at a museum. Somebody might see
2 it in a museum.

3 **BY MR. COHAN:**

4 **Q.** Okay.

5 **A.** And say, let's make this fly.

6 **Q.** Okay. And you didn't abandon the dream because you and
7 your brother bought another airplane, right?

8 **A.** Yes. And they've seen the Grumman Albatross. It's a
9 twin-engine ex-military amphibian that can land on land or
10 water.

11 **Q.** So was the purpose for purchasing that Albatross to do the
12 same thing that you'd intended to do with the Solent III when
13 you bought it?

14 **A.** Certainly, yes. It's -- an -- it's a (sic) ocean-going
15 capable aircraft. It can -- It can land on the water. And it
16 easily transferred the -- the concept to that particular
17 aircraft.

18 **Q.** Okay. And by 1987, you and your wife had moved to 1306
19 Sanderling Island, right?

20 **A.** Yes. That's -- That's so.

21 **Q.** And your daughter Lindsay was born in 1984 while you were
22 living in the bus, right?

23 **A.** Yes. We were living in a dirt field with no real
24 substantial electricity. We had a single 1500-watt heater
25 that would dim all the rest of the lights or blow a circuit

1 breaker, and so we had to turn things off and turn things on
2 in order to live, you know, with a little electricity.

3 Q. So -- But in 1986, after Lindsay was born but before
4 Brittany came along, you had an opportunity to move into 1306
5 Sanderling, right?

6 A. Yeah, I think it was December of '85, so that pretty much
7 correlates the five and a half years in the dirt field.

8 Q. And how were you able to afford to move into the house
9 where you've apparently lived for the last 30 years?

10 A. Well, some very kind people probably saw a couple living
11 out in a dirt field and so they kindly extended an invitation
12 for us to stay in their home, ostensibly because you'd have
13 lower insurance rates. But they were just being nice to us, I
14 think.

15 If somebody inhabits a home, the insurance rates aren't so
16 high if you have a -- a vacant home, it costs a lot. So, you
17 know, you can buy it, but they were really nice. They saw a
18 little toddler playing next to a school bus in a dirt field
19 and probably took a little pity on us.

20 Q. Anyway, you -- you were able to move in there for not very
21 much money, and I -- from what you just said, is it correct
22 that the owners didn't live in that house; they lived
23 somewhere else?

24 A. They lived up the street, yes.

25 Q. Okay. So you moved in I think you said in December of

1 '85. Your daughter Brittany was born in '86. And in 1987,
2 you bought the second airplane, right?

3 **A.** 1987, yes.

4 **Q.** Okay. But by then, you and your brother were already
5 working with the McDonald brothers?

6 **A.** Yes. That's so. There was some kind of a -- a connection
7 with the McDonald brothers working on a -- on a product. And
8 my brother was introduced to them and taken under their wing.
9 And eventually, I too helped work with the McDonald brothers
10 and developing our own little -- little operation, which
11 actually it started at about '82, '83, using some of the
12 aircraft-related techniques, bead blasting, sheet metal work
13 which Randy had done in the Navy, and we started a little
14 company.

15 **Q.** Okay. And so Grant Engineering, can you pinpoint when the
16 partnership actually got formed?

17 **A.** You know, we probably started doing stuff in '82, and we
18 probably got a -- a sales permit or whatever they call it
19 in -- in '83. So I kind of give it a -- official '83, but it
20 could have been -- you know, you could call it '82 when you --

21 When you start up lifting yourself up by the bootstraps,
22 it doesn't -- it doesn't -- you know, you don't really know
23 when you've started precisely. You kind of have an idea, but
24 sometimes it --

25 **Q.** Okay.

1 **A.** -- odd jobs.

2 **Q.** -- was Carol actually supporting you and Randy during the
3 entire period of time period '80 to '85 basically?

4 **A.** I mean, she certainly contributed. You know, because we
5 had to pay rent where we were staying. Not a huge rent, but
6 it was a lot for us, 150 a month seemed like a lot. Nowadays,
7 it's nothing.

8 So she helped keep us -- she cooked our food. She
9 shopped. And she was working at Children's -- Oakland
10 Children's Hospital as a physical therapist.

11 **Q.** And is it correct that she continued to do that work until
12 1994?

13 **MR. SAMPSON:** Objection, Your Honor. We're back into
14 leading quite a bit now.

15 **THE COURT:** Yeah. I've given you a lot of leeway on
16 background information, but at some point you've got to take
17 control and stop with the narrative answers.

18 **BY MR. COHAN:**

19 **Q.** So do you recall seeing the partnership agreement that was
20 at Mechanic's Bank that came into evidence here?

21 **A.** Yes. That was a basic partnership agreement from Nolo
22 Press out of Berkeley, and that's -- I went down to Berkeley
23 and got a partnership agreement.

24 **Q.** So you didn't hire a lawyer to draw up a partnership
25 agreement?

1 **A.** No, we probably didn't -- couldn't afford one.

2 **Q.** Okay. So do you recall what year that was?

3 **A.** 1983.

4 **Q.** Okay.

5 And were you -- when did you first assume responsibility,
6 if you did, for handling the financial affairs of the
7 partnership?

8 **A.** Probably pretty quickly. My brother definitely was a
9 hands-on guy, technical guy, and he did not want to have
10 anything to do with anything that had to do with pushing paper
11 or -- mean, I wouldn't say buying things. He certainly could
12 buy stuff. But he pretty much didn't want to deal with too
13 much in the way of administrative things.

14 **Q.** Okay.

15 So had the issue -- Well, strike that.

16 When did you first start filing your personal income tax
17 returns, if you can recall?

18 **A.** I'm sure as soon as we had an official little company set
19 up and we were earning -- I mean, some earnings of some kind.
20 Companies would pay us, you know. I mean, our biggest --
21 only -- really only -- well, we had actually more than just
22 BioRad who had moved in right next to us. We did some work
23 probably with the McDonald's. I don't know if they wrote us a
24 little check for something we might have done or the Lindberg
25 Combustion Control System, which was a water injection system

1 that was -- was being, in part, manufactured with the McDonald
2 brothers. That was sort of the nexus, the connection.

3 Q. Well, let me ask question again.

4 And I'm going to have to lead you a little bit. What
5 about when you were a teaching high school in Virginia?

6 A. Oh, certainly. Of course. Yes. My wages there and --

7 Q. So did you file individual income tax returns then?

8 A. Certainly.

9 Q. And was your wife Carol working also at that time?

10 A. She was a physical therapist in the same school system,
11 and we -- of course.

12 Q. So you say "of course." Did you consult with an attorney
13 or a C.P.A. or H&R Block to get your returns done, or did you
14 do them?

15 A. I might have done some myself. As I recall. You know,
16 the simple 1040 E-Z. And, you know, you do what everybody
17 else does.

18 Q. Okay. So did you see a law that provided criteria from
19 which you concluded that you were a person required to file?

20 A. There's no law?

21 MR. SAMPSON: Objection, Your Honor.

22 THE WITNESS: You just do what everybody else does.

23 THE COURT: Excuse me. When there's an objection,
24 you have to wait.

25 MR. SAMPSON: Vague as to time.

1 **THE COURT:** Sustained.

2 **BY MR. COHAN:**

3 **Q.** As far as you know, from the time you began filing income
4 tax returns until testifying today, have you ever seen any law
5 that requires you to file an income tax return?

6 **A.** No.

7 **Q.** Okay. But you were filing, according to your testimony,
8 beginning certainly as early as 1977, correct?

9 **A.** Correct.

10 **Q.** Okay. And then you began filing partnership returns,
11 didn't you?

12 **A.** Yes.

13 **Q.** And do you recall when you did that?

14 **A.** Same time.

15 **Q.** When you started doing that -- Excuse me.

16 **A.** 1983 or '4, thereabouts, when we --

17 **Q.** Okay. Well, you've seen testimony from -- Well, I -- I
18 guess you engaged Morre & Company before you engaged Carol
19 Zinck & Associates; is that right?

20 **A.** That's correct.

21 **Q.** Okay. How did you come to retain the services of Morre &
22 Company, if you recall?

23 **A.** I'm not absolutely -- I can't absolutely say how.

24 **Q.** Okay.

25 So I guess you should say "I don't remember."

1 **A.** I don't remember.

2 **Q.** All right.

3 Now, but you do remember that from, what, the late '80's
4 on through the '90's, Morre & Company C.P.A.'s were preparing
5 income tax returns for you and for Grant Engineering &
6 Manufacturing?

7 **A.** Yes, as I recall.

8 **Q.** Okay.

9 You just don't remember how you got connected with Morre &
10 Company.

11 **A.** Yes. Yes.

12 **Q.** Okay. Did you turn the microphone off?

13 **A.** I didn't -- There it is. Okay. It's on.

14 **Q.** All right.

15 So is it fair that you and Randy were the only two people
16 employed by Grant Engineering & Manufacturing until the
17 1990's?

18 **A.** In some way I considered my wife a part of it, but that
19 was unofficial. So, you know, she is kind of sustaining us a
20 bit, but that dropped by the wayside. It was Randy and I.

21 **Q.** Well, she wasn't getting paid, was she?

22 **A.** No.

23 **Q.** Okay. You split whatever there was between you and your
24 brother ongoing, what, every month or every two weeks? Do you
25 recall?

1 **A.** Wow, when you start up, you kind of say, hey, do we have
2 some money. We didn't draw the -- the company down.

3 **Q.** The question was do you recall.

4 **A.** Oh. No.

5 **Q.** Okay.

6 Sorry to interrupt, but --

7 **THE COURT:** Thank you.

8 **BY MR. COHAN:**

9 **Q.** Anyway, do you recall the -- Let me put it another way.

10 What's your earliest recollection of doing bookkeeping for
11 the partnership and forwarding the information retaining --
12 relating to the bookkeeping to Morre and associates.

13 Do you remember whether you were doing that by 1990?

14 **A.** I believe so. Once we started operating within the
15 McDonald Custom Molding little shop, I remember -- I
16 believe -- process -- you know, putting -- assembling
17 materials, but I don't have an exact date.

18 **Q.** Okay. You heard Linda Panichelli and saw Linda Panichelli
19 in here testifying?

20 **A.** Yes.

21 **Q.** Okay. Do you recall her making statements about doing the
22 bookkeeping for the partnership actually in -- as well as
23 preparing returns?

24 **A.** Yes.

25 **Q.** Was Morre & Company actually doing Grant Engineering's

1 bookkeeping from, like, roughly 1990 onward?

2 **A.** They did some bookkeeping, as I recall, and -- and they
3 did the returns. And then it seemed that either it was
4 expensive or somehow we might have been referred to the Carol
5 Zinck Associates -- and Associates.

6 **Q.** Okay. Did you ever perform yourself the calculations to
7 determine what should be withheld from the employees'
8 paychecks?

9 Let me withdraw that question.

10 Let's go back to -- When did you start, as far as you can
11 recall, hiring people, paying them? And when I say "you," I
12 mean the partnership -- withholding from employee's wages. Do
13 you recall that at all?

14 **A.** I believe it was the '90's.

15 **Q.** Okay. So you can't be any more specific than that?

16 **A.** It's really hard.

17 **Q.** So do you know whether you actually performed the
18 calculations that determined what had to be withheld from each
19 paycheck and then sent the paycheck to whoever was receiving
20 those funds for the State and for the federal government?

21 **A.** I don't remember.

22 **Q.** Do you recall that certainly sometime in the '90's you
23 were no longer -- if you ever had been involved in that
24 process, you were not involved in it any longer?

25 **MR. SAMPSON:** Objection, it's leading.

1 **THE COURT:** Overruled. I'll allow it.

2 **THE WITNESS:** Yes. I would package stuff up and send
3 it off so that it can be done.

4 **BY MR. COHAN:**

5 **Q.** Okay. So you don't recall -- if I understand your
6 testimony -- Let me ask a question.

7 As far as you know, did either Morre & Company or Carol
8 Zinck & Associates do all the withholding and just tell you --
9 and provide you with the forms to file and how much money to
10 pay?

11 **A.** Yeah, I -- you know, 1040's and 1041's and L's and this
12 and that kind of baffled me and overwhelmed me because I was
13 really trying to do a lot -- we wore all the hats. I
14 described us -- instead of white color workers and blue collar
15 workers, I like to say we were no collar workers. We wore
16 T-shirts and -- and so I was -- we did everything.

17 **Q.** Okay.

18 **A.** And -- And the numbers and everything were kind of beyond
19 me. You could -- You could pay -- You could keep a checkbook
20 balanced, but then it was a much -- bit much.

21 **Q.** Okay.

22 **MR. SAMPSON:** Objection, Your Honor. It was not
23 responsive to the question.

24 **THE COURT:** Yeah. I -- I'll make you a deal. I'll
25 allow you to ask somewhat leading questions if you can control

1 the narratives that Mr. Grant is giving. The narrative
2 answers are not responsive.

3 **MR. COHAN:** I understand. That's why --

4 **THE COURT:** So I will give you leeway in asking
5 leading questions.

6 **MR. COHAN:** Thank you. I will try not to lead other
7 than to just focus the witness's attention.

8 **THE COURT:** That's -- I appreciate that.

9 **MR. COHAN:** Thank you.

10 **Q.** So did you start listening to talk radio sometime in the
11 '90's?

12 **A.** Yes. Manufacturing -- Oh, yes.

13 **Q.** Okay. What talk radio station did you listen to, if you
14 recall?

15 **A.** Well, it was 560AM, talk radio show. Actually many
16 different hosts.

17 **Q.** Do you remember the call letters of the station at AM560?

18 **A.** KSFO.

19 **Q.** Okay. And who -- do you recall the name of any particular
20 host or disc jockey -- I guess host. We're talking talk
21 radio. Excuse me -- radio hosts to whom you were listening in
22 the '90's?

23 **A.** Jeff Metcalf.

24 **Q.** And what was your understanding of who Jeff Metcalf was
25 and is?

1 **A.** Well, he was a well-spoken talk show host, ex- -- he's a
2 retired lieutenant colonel, Army Special Forces.

3 **Q.** And was there a particularly memorable topic that's
4 pertinent to this trial that you recall listening to in
5 December of 1996?

6 **A.** Yes.

7 **Q.** Okay. You answered yes.

8 Next question: What was the subject matter that you were
9 listening to that was of interest to you in December of 1996
10 on Lieutenant Colonel Jeff Metcalf's radio show on KSFO?

11 **MR. SAMPSON:** Objection. The foundation, of interest
12 to the witness.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** He had a host by the name of D.V. Kidd,
15 a lady from -- I don't know where she was from actually now.

16 Should I stop there?

17 **BY MR. COHAN:**

18 **Q.** No, you can continue. What was the subject matter of the
19 show? She wasn't the host, but she was --

20 (Simultaneous colloquy.)

21 **THE WITNESS:** She was a guest.

22 **BY MR. COHAN:**

23 **Q.** My turn.

24 Was the subject of the show, Jeff Metcalf with his guest
25 D.V. Kidd, anything to do with income taxes?

1 **A.** Yes.

2 **Q.** And what was it about the discussion of income taxes that
3 you recall that was of interest to you?

4 **A.** She specifically talked about the voluntary nature of the
5 income tax, federal income tax.

6 **Q.** And what was your reaction to hearing that the income tax
7 was voluntary?

8 **A.** Obviously, it's jaw dropping. You just can't really
9 accept it on the face because everybody knows that there's an
10 income tax.

11 **Q.** Um-hmm.

12 And had you ever seen anything prior to listening to that
13 radio show that used the word "voluntary" in connection with
14 filing income tax returns and paying income taxes?

15 **A.** Yes.

16 **Q.** What?

17 **A.** My own -- yes.

18 **Q.** What was that?

19 **A.** That was the 1040 instruction booklet.

20 **Q.** And what on the 1040 instruction booklet do you recall
21 used the word "voluntary"? What was the context?

22 **A.** Well, I -- as I recall, it was something to do with the
23 voluntary -- voluntary compliance with the tax system. It was
24 like words -- or the largest voluntary system or something
25 along those lines. I'm having a hard time right now.

1 **MR. SAMPSON:** Objection. The answer contained
2 hearsay.

3 **THE COURT:** Overruled.

4 **MR. COHAN:** It's effect of the hearer.

5 **THE COURT:** I overruled the objection.

6 **MR. COHAN:** I know. I was sort of --

7 **THE COURT:** Okay.

8 **MR. COHAN:** Forgive me.

9 **THE WITNESS:** That -- Yeah.

10 **BY MR. COHAN:**

11 **Q.** So anyway, you -- you were listening to this radio show,
12 and this lady heard -- identify herself as D.V. Kidd was
13 suggesting that there was no law that required filing of an
14 incomes tax return; it was voluntary.

15 Was that what you heard?

16 **MR. SAMPSON:** Objection, misstates the testimony
17 about law requiring.

18 **THE COURT:** Sustained.

19 **BY MR. COHAN:**

20 **Q.** Did you equate the idea that filing income tax returns is
21 voluntary with the idea that there was no law, or was that
22 actually stated during the course of the radio show?

23 **A.** They actually stated that.

24 **Q.** And you've already said that your jaw dropped. Beyond
25 recovering the use of your jaw, did you do anything else in

1 response to receiving this information that obviously had some
2 impact on you?

3 **A.** It makes you -- It just starts making you question -- just
4 start looking around a little more.

5 **Q.** What did you do by way of looking around a little more, if
6 anything?

7 **A.** Well, just wondered. I almost laughed out loud because I
8 had recalled the voluntary notification in the 1040 booklet.
9 It was just, like, I went -- I mean, you just can't believe
10 it. I mean, it was -- it was the same thing, but if you look
11 at the 1040 booklet, at least at the time, there's this exact
12 verbiage.

13 **Q.** Okay.

14 Do you recall listening to the -- Strike that.

15 Do you recall watching C-Span the Fourth of July weekend
16 in 1999?

17 **MR. SAMPSON:** Objection, Your Honor. That's
18 completely leading.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** Wow. Yeah, the -- the C-Span 2.

21 **BY MR. COHAN:**

22 **Q.** "Yes " --

23 **A.** Yes.

24 **Q.** -- was the answer.

25 **THE COURT:** Okay.

1 **BY MR. COHAN:**

2 **Q.** What did you see on C-Span 2 on the Fourth of July weekend
3 of 1999 that had some impact on you with respect to whether
4 you did or did not have a duty to file income tax returns?

5 **A.** There was a series of hosts -- I mean, guests and -- and
6 they actually -- it was a symposium put on at the National
7 Press Club. And the guests were very astute, well-spoken,
8 matter-of-fact, calm -- I don't know where the adjectives
9 stop -- highly credible individuals, dressed in suits, at the
10 National Press Club now and speaking on the legality of the
11 income tax.

12 **Q.** Where was the National Press Club located, what city?

13 **A.** It's in Washington, D.C. just practically within sight of
14 the capital and the White House. It's right there where our
15 leaders are supposed to be working.

16 **Q.** Okay. And what did you see on there -- you've described
17 the appearance of guests. What were they discussing that had
18 an impact on your views of whether you were or were not
19 required by law to file income tax returns and pay income
20 taxes?

21 **A.** There was a discussion about the voluntary nature, again,
22 the income tax, and they had different guests talking about
23 different experiences and knowledge bases.

24 And one particular guest was Mr. Joseph Bannister, who was
25 the former only recently resigned from the IRS Criminal

1 Investigation Division.

2 Q. And where was Mr. Bannister an IRS Special Agent
3 geographically, if you know?

4 A. San Jose area.

5 Q. California?

6 A. Yeah. Northern California.

7 Q. Do you recall where Mr. Bannister mentioned anything about
8 KSFO radio on video that you -- not video you watched but
9 C-Span that you were watching at that time?

10 A. Could you say that again?

11 Q. Yes.

12 Do you recall whether Special Agent Bannister mentioned
13 anything about listening to KSFO radio in December of 1996?

14 A. As I recall, he recounts his experience, and that was by
15 coincidence, although there's probably tens of thousands, if
16 not more people listening to a radio station. I believe I
17 heard the same exact radio broadcast.

18 Q. And after you joined Freedom Law School, were you able to
19 get a video of that entire presentation of what you saw on
20 C-Span in July of 1999?

21 A. I was.

22 Q. And have you reviewed it -- Oh, strike that.

23 I have here, Your Honor, Exhibit 506. This is the
24 original container of video that I'm about to seek to
25 introduce some excerpts from in accordance with the court's

1 ruling, just excerpts from it.

2 Is it fair to say that the entirety of the video was more
3 than three hours long?

4 **A.** Is that the C-Span --

5 **MR. COHAN:** May I show it to the witness, Your Honor?

6 **THE COURT:** Yes.

7 **BY MR. COHAN:**

8 **Q.** (Handing exhibit.)

9 **A.** Yes.

10 **Q.** Okay. Do you recall receiving this container that had a
11 DVD in it -- that had a copy of that C-Span broadcast in 1999
12 in this actual container in my hand --

13 (Simultaneous colloquy.)

14 **THE WITNESS:** Yes.

15 **BY MR. COHAN:**

16 **Q.** Did you provide this to me?

17 **A.** Yes.

18 **Q.** Okay. So you -- when did you first receive this DVD?

19 **A.** I received videotapes initially of the C-Span in 2003.

20 **Q.** Okay. And then at some later time, you got this DVD that
21 had the same program just recorded in this different format?

22 **A.** Yeah, VHF tapes, you know, they don't last forever.

23 **Q.** Okay. But you have the DVD that reflected the same C-Span
24 presentation from July of 1999 on this DVD that you got from
25 Mr. Mottahedeh?

1 **A.** Yes.

2 **MR. COHAN:** Okay. Now, I'm not going to move the
3 entirety of the video in, Your Honor, based on the court's
4 ruling, just the excerpts.

5 **Q.** But I want to ask you, Mr. Grant, after you retained any
6 services to represent you in matter, did I ask you based on
7 the court's ruling to pick out the most important portions of
8 this video so that we could create some excerpts that we could
9 show to the jury during this trial?

10 **A.** Yes.

11 **THE COURT:** Yes, counsel.

12 **MR. SAMPSON:** Your Honor, I raise a concern. The
13 government doesn't have a copy of those excerpts.

14 **THE COURT:** You have not previewed them?

15 **MR. SAMPSON:** What's that?

16 **THE COURT:** You have not previewed them?

17 **MR. SAMPSON:** We were given the entire DVD.
18 Additionally, I was told at the break there are materials in
19 front of the defendant that were not produced to the
20 government relating to the C-Span video.

21 **THE COURT:** Okay. What materials are those?

22 **MR. SAMPSON:** Apparently a written transcript, and it
23 says "attorney work product" on it.

24 **MR. COHAN:** No, he does have a copy of the -- he was
25 just given that.

1 **MR. SAMPSON:** I asked for it at the break and was
2 just given it.

3 **THE COURT:** Okay. All right.

4 All right. Fine. I ruled before trial that we're not
5 going to play a three-hour video for the jury. We will play
6 excerpts so that we can see what Mr. Grant was looking at.
7 And since you've had the entirety of it, I see no reason why
8 we shouldn't play any snippets of it.

9 **MR. COHAN:** Fine. We understand.

10 **THE COURT:** How long is the excerpt?

11 **MR. COHAN:** There are multiple excerpts, Your Honor.
12 And I have the -- the first one I think is about 3 minutes and
13 4 seconds. The second one is about 39 seconds. The next
14 one's 2 minutes and 20 seconds. The next one's 2 minutes and
15 20 seconds.

16 **THE COURT:** Did you edit them together?

17 **MR. COHAN:** Oh, they're all -- we're going to play
18 them consecutively.

19 **THE COURT:** Okay. And what's the entire period of
20 time you're seeking to view.

21 **MR. COHAN:** I'm just totaling it up. I think it's
22 around 20 minutes, give or take.

23 **THE COURT:** Okay. Yes.

24 **MR. SAMPSON:** Your Honor, I'm also not sure there's a
25 foundation. I also think this evidence is cumulative about

1 the defendant's testimony about what he heard and understood.

2 **THE COURT:** I understand that, but I already ruled on
3 the cumulative objection. And I indicated that we would allow
4 a small sampling of the materials Mr. Grant relied upon. This
5 is one of them. Let's play it.

6 **MR. COHAN:** Thank you, Your Honor.

7 (Off-the-record discussion.)

8 **THE COURT:** It will be not reported.

9 **MR. COHAN:** We'll have a transcript if there's any
10 need for it that my office prepared of the -- and we provided.

11 **THE COURT:** It's not an official transcript.

12 **MR. COHAN:** No, no. I understand.

13 **THE COURT:** It's an exhibit. It's being played. We
14 don't need a transcript. It's being played for the jury.

15 (Video playing.)

16 **MR. SAMPSON:** Your Honor, this --

17 **THE COURT:** Excuse me.

18 **MR. SAMPSON:** This is not part of the clip.

19 **THE COURT:** Pause it. Pause it. Pause it.

20 **MR. SAMPSON:** This is playing from zero, and the clip
21 starts at one minute eight and goes on.

22 **MR. COHAN:** That is false, Your Honor.

23 **THE COURT:** What part is false, that the clip starts
24 where?

25 **MR. COHAN:** The clip starts exactly where I said it

1 did. 108 into the -- the intro. And the words that are on
2 there, the same words that this person on the screen was
3 speaking, and he has it in his left hand, Your Honor.

4 **THE COURT:** Okay. So that number down at the bottom
5 isn't the same.

6 **MR. COHAN:** The time coding discounts the clip, Your
7 Honor.

8 **THE COURT:** Okay. All right. Thank you.

9 **MR. COHAN:** This -- This tells him where it is in the
10 originals that we gave him.

11 **THE COURT:** Okay. Go ahead.

12 **MR. COHAN:** Please continue.

13 (Video playing.)

14 **MR. COHAN:** Next segment, please.

15 (Video playing.)

16 **MR. COHAN:** Next clip, please.

17 (Video playing.)

18 **MR. COHAN:** Next clip?

19 (Video playing.)

20 **MR. SAMPSON:** Your Honor, I'm just going to interpose
21 a relevance objection to these last two clips.

22 **THE COURT:** All right. Overruled.

23 Go ahead.

24 **MR. COHAN:** Go ahead.

25 (Video playing.)

1 **MR. COHAN:** Next clip.

2 (Video playing.)

3 **MR. SAMPSON:** Your Honor, after almost a half hour of
4 videos, I would ask the court instruct the jury on the law.

5 **THE COURT:** Well, I'm not going to instruct them on
6 the law --

7 **MR. SAMPSON:** On legal material.

8 **THE COURT:** -- until we get to the jury charge. But
9 I will read the limiting instruction again.

10 **MR. SAMPSON:** Thank you.

11 **THE COURT:** I believe that I instructed you all
12 yesterday that evidence of legal matters -- legal materials
13 that are going to be introduced here today, that Mr. Grant
14 relied upon are admitted only as to Mr. Grant's state of mind.
15 They do not represent the requirements of the law.

16 I will tell you what the law actually is that applies to
17 this case.

18 All right. Continue.

19 **MR. COHAN:** Thank you.

20 **Q.** So after you saw that -- of course, you saw a lot more
21 than that, correct, on --

22 **A.** Oh, yes.

23 (Simultaneous colloquy.)

24 **BY MR. COHAN:**

25 **Q.** -- weekend.

1 Let me finish the question.

2 **A.** Oh.

3 **Q.** I'm drawing your attention back to the July 4th weekend
4 1999. And I'm asking you whether you saw a much longer
5 presentation on C-Span than just those excerpts that we just
6 went through.

7 **A.** Yes.

8 **Q.** Okay. And those excerpts that the jury just saw were
9 excerpts that you selected off of the video that we introduced
10 as exhibit -- or I identified as Exhibit 506. And -- that --
11 that you thought were most important to influencing your
12 decision to top filing income tax returns?

13 **A.** Yes.

14 **Q.** Okay.

15 So I'm moving the admission of that exhibit, Your Honor.

16 **THE COURT:** All right. The -- We need an exhibit
17 that contains the excerpts --

18 **MR. COHAN:** That's the exhibit we have.

19 **THE COURT:** -- for the record. That's it?

20 **MR. COHAN:** Yeah, we just played it.

21 **THE WITNESS:** The thing that you showed was just the
22 container of the original.

23 **MR. COHAN:** Right. We've served the government with
24 the DVD's, I believe, and the transcript of what's been played
25 on there.

1 **THE COURT:** Excerpted.

2 **MR. COHAN:** Yes.

3 **THE COURT:** Okay.

4 **MR. SAMPSON:** We don't have the excerpts, Your Honor.
5 We just have the full videos, so I'm not sure what's being
6 admitted.

7 (Simultaneous colloquy.)

8 **THE COURT:** All right.

9 **MR. COHAN:** I'm sorry.

10 **THE COURT:** Excuse me.

11 What I am admitting is the excerpts that have been played
12 here. We need a DVD for the record.

13 **MR. COHAN:** We -- I have it, Your Honor.

14 **THE COURT:** Okay. Then we'll take care of it.

15 (Simultaneous colloquy.)

16 **THE CLERK:** The number, which I think is 506A which
17 hasn't been noted.

18 **MR. COHAN:** Okay. Thank you.

19 **THE COURT:** Is 506A, though, the --

20 **MR. COHAN:** 5-0 --

21 **THE COURT:** -- entire exhibit or just the excerpt?

22 See, I think you've marked 506 as the original copy of the
23 disc in the packaging.

24 **MR. COHAN:** Right. But the only disc that we brought
25 is 506A, and that's a disc that only contains the excerpts.

1 **THE COURT:** Okay. Then that's the only one.

2 **MR. COHAN:** And that's in the binders.

3 **THE COURT:** That will be admitted.

4 **MR. COHAN:** Thank you.

5 (Defendant's Exhibit 506A received in evidence)

6 **BY MR. COHAN:**

7 **Q.** Okay. Now, for the rest of 1999, Mr. Grant, did you
8 continue with making quarterly payments?

9 **A.** I believe so.

10 **Q.** Okay. So when April the 15th -- Well, strike that.

11 Did you happen to see some newspapers in which *We the*
12 *People* had published something about the income tax --

13 **A.** Yes.

14 **Q.** And was that before April the 15th of 2001?

15 **A.** Yes.

16 **Q.** And --

17 (Reviewing document.)

18 **MR. SAMPSON:** Your Honor, I'm seeing an exhibit that
19 has not been given to the government. The -- This whole *USA*
20 *Today* appears to be marked as an exhibit.

21 **THE COURT:** Do you understand you are required to
22 give the government copies of every exhibit?

23 If you've done so --

24 **MR. COHAN:** We have.

25 **THE COURT:** -- point it out.

1 **MR. COHAN:** We have, Your Honor. We have copies, and
2 what we've done is just copied the -- the page out of this
3 original that Mr. Grant kept that he received in March of
4 2001, not whole paper, but just to show that this is where it
5 came from.

6 **THE COURT:** Is the excerpt marked as --

7 **MR. COHAN:** It is.

8 **THE COURT:** -- an exhibit? Then just identify it so
9 that counsel can see if he has a copy.

10 **MR. COHAN:** Bear with me. We have more than one
11 newspaper, and this one is --

12 **MR. SAMPSON:** Your Honor, we only have an insert that
13 says it's a reprint from Freedom Law School. We don't have
14 this original --

15 **MR. COHAN:** 511.

16 **THE COURT:** Hold on. Hold on. He's identifying it.
17 511. It's in the binder.

18 **MR. COHAN:** Yes, it is.

19 **THE COURT:** Do you have that, counsel?

20 **MR. SAMPSON:** 511?

21 **MR. COHAN:** Yes, sir.

22 **MR. SAMPSON:** Starts at 514, Your Honor.

23 **MR. COHAN:** It's 511.

24 (Pause in the proceedings.)

25 **MR. SAMPSON:** Yes. We received this this morning on

1 our table.

2 **THE COURT:** Okay. All right.

3 **BY MR. COHAN:**

4 **Q.** Mr. Grant, do you have Exhibit 511?

5 **A.** (Reviewing document.)

6 Yes.

7 **Q.** Okay. And what is Exhibit 511?

8 **A.** It's from *USA Today*, a cover sheet there.

9 **Q.** Well, it shows -- initially on the first page, it shows
10 the front page of this edition, doesn't it, with a date?

11 **A.** Yes.

12 **Q.** Of March the 2nd to 4th, 2001?

13 **A.** Yes.

14 **Q.** Okay. Inviting your attention to the second page, if you
15 look in the upper right-hand corner --

16 **THE COURT:** Hold on. What is it?

17 **MR. SAMPSON:** Your Honor, I just have a Rule 16
18 objection that this has been given to us in the middle of
19 trial.

20 **THE COURT:** And why is it that it's something that
21 you believe should have been given to you in advance?

22 (Off-the-record discussion.)

23 **THE COURT:** What is your explanation, counsel?

24 **MR. COHAN:** It was provided long ago to the
25 government. It has a Bates number on it and was produced to

1 the government. Of course, we didn't give them a -- our only
2 copy of this. We gave them a copy of the front page, and we
3 gave them a copy of the page that has this full-page ad that
4 Mr. --

5 **THE COURT:** Mine does not have a Bates number. I
6 assume that the Bates number indicates that it was in
7 discovery?

8 **MR. COHAN:** My understanding is that it was produced
9 to the government months ago.

10 **MR. SAMPSON:** I can tell the court that this or the
11 handwritten 511 on it, that this is not something that the
12 government has had.

13 **THE COURT:** All right.

14 **MR. SAMPSON:** We've had these (indicating).

15 **THE COURT:** All right. We'll take this up outside
16 the presence of the jury.

17 Move on with some exhibits that you have indeed produced.

18 **BY MR. COHAN:**

19 **Q.** So, Mr. Grant, did you see a newspaper article that --
20 Well, strike that.

21 Not a newspaper article. Did you see the original
22 newspaper that I was holding in my hand a few moments ago that
23 was copied and turn to what's marked as Exhibit 511?

24 **THE COURT:** I -- You're just getting around my
25 ruling. For now, 511 we're putting aside.

1 **MR. COHAN:** I understand that, but I --

2 **THE COURT:** So you may not ask any questions about
3 511.

4 **MR. COHAN:** Oh, okay.

5 **THE COURT:** Move to another exhibit that you've given
6 to the government.

7 **MR. COHAN:** Very well.

8 I thought all these newspaper excerpts were given to the
9 government.

10 Is it the government's position they didn't get them?

11 **MR. SAMPSON:** No, that's not the government's
12 position, Your Honor. Our position is that there's an insert
13 to this paper that indicates it was a reprint from Freedom Law
14 School. That's what the government got. We didn't get the --
15 the *USA Today* cover sections.

16 **THE COURT:** Okay.

17 **MR. SAMPSON:** And that's what we're objecting to.

18 **THE COURT:** All right. So you can't use it now.

19 **MR. COHAN:** Okay. Very well.

20 **Q.** So inviting your attention to Exhibit 507, do you have
21 that before you?

22 **A.** (Reviewing document.)

23 Yes.

24 **Q.** Okay. Do you recognize Exhibit 507, sir?

25 **A.** I do.

1 Q. And where do you believe you first saw what's been marked
2 for purposes of identification as Exhibit 507?

3 A. I had one copy of an original *USA Today*, and then the
4 other ones I got from Freedom Law School in 2003.

5 Q. Okay.

6 So is Exhibit 507 a copy of what you got from Freedom Law
7 School in 2003 that is a piece of -- or excerpt of a
8 newspaper?

9 A. I believe so.

10 Q. And it has multiple pages; is that right?

11 A. (Reviewing document.)

12 One has two pages.

13 Q. 507 has two pages?

14 A. Wait a minute. Well --

15 Q. One --

16 A. In this -- this one --

17 (Reviewing document.)

18 There's several articles in here.

19 Q. Okay. Would it be fair to say that at the time you read
20 these articles and knew exactly what they contained?

21 A. Yeah, I mean, it -- it's -- it's information supporting
22 these people's position about the income tax.

23 Q. And can you state that these different newspaper article
24 copies all basically contain essentially identical
25 information?

1 **MR. SAMPSON:** Objection.

2 **THE WITNESS:** They're different.

3 **MR. SAMPSON:** Objection, that's vague, Your Honor.

4 **THE COURT:** Yeah. Bad question.

5 **BY MR. COHAN:**

6 **Q.** What, if any, difference have you determined between the
7 contents of these various publications other than the
8 photographs above the text?

9 **A.** (Reviewing document.)

10 They're basically saying that the income tax is not
11 required.

12 **Q.** Okay.

13 **THE COURT:** And are you referring only to 507?

14 **MR. COHAN:** I am right now only referring to 507,
15 which has, I think, three different copies of what is
16 essentially the same thing, Your Honor.

17 **THE COURT:** Okay.

18 **MR. COHAN:** So I'm moving the introduction of Exhibit
19 507.

20 **THE COURT:** Any objection?

21 **MR. SAMPSON:** Yes, Your Honor. It's cumulative of
22 what the defendant's testified to.

23 **THE COURT:** Overruled. It's admitted.

24 (Defendant's Exhibit 507 received in evidence)

25

1 **BY MR. COHAN:**

2 **Q.** Okay. Now, inviting your attention the Exhibit 508, do
3 you recognize Exhibit 508?

4 **A.** (Reviewing document.)

5 I'm -- I'm -- Yeah, I'm familiar with it, little bit.

6 **Q.** Do you recall when you first saw it?

7 **A.** Boy, it's been a long time. I don't want to say with
8 absolute certainty.

9 **Q.** You don't have to be absolutely certain.

10 Do you believe that you received this from Freedom Law
11 School back near 2003?

12 **A.** Yes. They --

13 **Q.** Is there any doubt that you received this from Freedom Law
14 School?

15 **A.** No.

16 **Q.** Okay. Your only question is you're not sure you might
17 have received it later than 2003?

18 **A.** I got a lot of materials after we joined, so a lot came.

19 **Q.** Are you confident you received it more than ten years ago?

20 **A.** Yes.

21 **Q.** Okay.

22 So I move the admission of Exhibit 508, Your Honor.

23 **THE COURT:** Any objection?

24 **MR. SAMPSON:** Your Honor, it's cumulative. It's 403.
25 It's potentially confusing of the issues.

1 **THE COURT:** All right. Overruled.

2 (Defendant's Exhibit 508 received in evidence)

3 **BY MR. COHAN:**

4 **Q.** Okay. Now, is this Exhibit 508 that you had before you --
5 May I publish, Your Honor?

6 **THE COURT:** Yes.

7 (Pause in the proceedings.)

8 **MR. COHAN:** Okay.

9 (Exhibit published.)

10 **BY MR. COHAN:**

11 **Q.** It's hard to read this. Did you provide us with your
12 original copies after you retained my law firm and we made
13 copies from your originals?

14 **A.** I believe so.

15 **Q.** Okay.

16 So you recognize that this is something that you received
17 from *We the People* -- or strike that -- from Freedom Law
18 School more than ten years ago, correct?

19 **A.** Correct.

20 **Q.** And without going through all this, the jury can read as
21 much of it as they want.

22 **THE COURT:** Well, it's fairly illegible. I'm not
23 sure -- I can't read it. I'm not sure what the jury's ability
24 to read this is.

25 **MR. COHAN:** I respectfully disagree. I can read

1 every word on this page, Your Honor.

2 **THE COURT:** Well, perhaps your eyes are better than
3 mine. I'm telling you that I can't read it. If you want the
4 jury to be able to read it, you need to blow it up more than
5 this.

6 **MR. COHAN:** Oh, okay.

7 **THE COURT:** The font is tiny. It's blurred.

8 (Exhibit published.)

9 **BY MR. COHAN:**

10 **Q.** Oh okay. I have the original here that will probably be
11 easier to read.

12 (Exhibit published.)

13 **THE COURT:** Much clearer.

14 **MR. COHAN:** Whoops.

15 (Exhibit published.)

16 **BY MR. COHAN:**

17 **Q.** Okay. Better?

18 **THE COURT:** It is for me. Thank you.

19 **MR. COHAN:** Okay. Thank you. Okay. And I just want
20 to be clear this is Exhibit 508.

21 **Q.** Now, this -- you see the headline "Congress," comma,
22 "President, served with petitions with protest"?

23 **A.** (Reviewing document.)

24 **Q.** This is the first page of 508, sir.

25 **A.** 508, what -- what page?

1 Q. First page of 508, and it probably would be on your
2 monitor in color.

3 A. Oh, I can see the -- the color version here.

4 MR. COHAN: Thank you, Your Honor.

5 Q. Do you recall what the petitions were, whether they were
6 the same thing that was referred to by Mr. Bannister and by
7 Mr. Schultz on the video?

8 A. Similar.

9 Q. Okay. And were you interested mostly in the issues
10 pertaining to whether there was a law that required the filing
11 of federal income tax returns?

12 A. That's correct.

13 Q. Okay. I don't want to take court time to read now. The
14 jury can have the original.

15 THE COURT: Okay.

16 MR. COHAN: We only have obviously one copy of the
17 original.

18 MR. SAMPSON: I've got one.

19 MR. COHAN: I lied. We have two copies. The
20 government has one.

21 Q. Inviting your attention, if I may, sir, to Exhibit 509.

22 A. (Reviewing document.)

23 Q. Do you recognize 509?

24 A. Yes.

25 Q. Is this a copy of a newspaper, the original of which you

1 provided to me in connection with my representation of you?

2 **A.** (Reviewing document.)

3 I -- This looks like one in 2003 that I got in that time
4 period and was -- and I forward to you 'cause I can tell that
5 there's the Freedom Law School phone number, et cetera, on the
6 upper right-hand corner, so it was 2003, well into 2003.

7 **Q.** Okay.

8 **A.** So it's a original copy.

9 **Q.** Was this similar in terms of the content of making claims
10 basically that there was a real question whether there was any
11 law requiring the filing of an income tax return?

12 **MR. SAMPSON:** Objection, Your Honor, argumentative
13 and leading.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** Yes, as all of the other ones are --

16 **BY MR. COHAN:**

17 **Q.** Okay.

18 (Simultaneous colloquy.)

19 **MR. COHAN:** I'm moving the admission of Exhibit 509,
20 Your Honor.

21 **THE COURT:** All right. Same objection?

22 **MR. SAMPSON:** Yes, Your Honor.

23 **THE COURT:** All right. Overruled.

24 **MR. COHAN:** May I publish?

25 **THE COURT:** Yes.

(Defendant's Exhibit 509 received in evidence)

MR. COHAN: This time, I'll use the color original.

(Exhibit published.)

MR. COHAN: Okay.

Q. So does this look like the original that you provided me with?

A. (Reviewing document.)

It's an original copy.

Q. Okay. And you got this from Freedom Law School way back in 2003, you believe?

A. Yes, I can quickly see the phone number in the upper right-hand corner.

Q. Okay. So did this impact your belief that you did not have any duty to file income tax return?

A. Reaffirmed it.

Q. Thank you.

MR. COHAN: Did I move in 507, Your Honor?

THE COURT: I don't think --

THE CLERK: Yes.

THE COURT: You did? Okay. 507's in.

MR. COHAN: Okay. I'll just briefly review 507.

Q. Mr. Grant, is this very similar to the previous exhibits of newspaper articles? Is the content of the articles essentially the same material?

A. (Reviewing document.)

1 Yes. Different -- Different experts. I'm just looking to
2 make sure there's no duplication here.

3 Q. Okay.

4 A. Can do it by the people and the faces.

5 Q. Okay. Okay.

6 Turn, if you would, to Exhibit 510.

7 A. (Reviewing document.)

8 Q. Not in evidence yet.

9 A. (Reviewing document.)

10 Q. Tell us when you have the exhibit.

11 A. Oh, yes.

12 Q. Okay. Do you recognize Exhibit 510?

13 A. I do.

14 Q. And is it essentially the same material as we've seen in
15 Exhibits 507, 508, 509 and 511? More newspaper publications
16 of the same essential material, only different photographs?

17 A. Yes.

18 Q. Okay.

19 I move the admission of Exhibit 510, Your Honor.

20 THE COURT: Objection?

21 MR. SAMPSON: The witness has testified it's the same
22 material, Your Honor. That's cumulative.

23 THE COURT: Yeah. It is. It's the very definition
24 of "cumulative." I'll allow it. This is the last one.

25 MR. COHAN: It is the last one, Your Honor, and the

1 reason I --

2 **THE COURT:** Okay.

3 **MR. COHAN:** It's got a date on it.

4 (Defendant's Exhibit 510 received in evidence)

5 **BY MR. COHAN:**

6 **Q.** Okay.

7 (Exhibit published.)

8 **BY MR. COHAN:**

9 **Q.** Just inviting your attention, if I may, Mr. Grant, to
10 Exhibit 510, do you see that this is page 11A from *USA Today*
11 Friday, February 16th, of 2001?

12 **A.** Yes.

13 **Q.** And this is the same -- Well, it's not exactly the same
14 prose, but is it fair to say the arguments and the evidence
15 that is cited in this is the same essential material
16 supporting your belief that you -- you didn't have a duty to
17 file an income tax return?

18 **A.** Yes.

19 **Q.** Okay. Thank you.

20 Move the -- I guess it's in evidence. Thank you.

21 Correct?

22 **THE COURT:** Yes.

23 **MR. COHAN:** Thank you.

24 **Q.** Inviting your attention to Exhibit 512.

25 **A.** (Reviewing document.)

1 Q. Did you receive Exhibit 512 on or about March 18, 2001,
2 which is the date on the first page of it?

3 MR. SAMPSON: Objection, Your Honor. The witness is
4 being led.

5 THE COURT: Yes, but we're trying to get through
6 this. I'm allowing some leeway in this regard, if we can keep
7 Mr. Grant's statements focused. Overruled.

8 THE WITNESS: Yes. I'll -- Obviously later.

9 THE COURT: Well, we can't have it both ways.

10 Either you can ask a fairly leading question and he can
11 give a direct answer, or I won't permit you to lead and I'll
12 give him more leeway.

13 MR. COHAN: Okay.

14 THE COURT: But you can't have it both ways.

15 MR. COHAN: As between us, I think and I hope I'm a
16 little more concise, but that's for others to judge.

17 Q. So I'd like to go ahead, try to just get you to answer
18 "yes" and "no" when they're "yes" and "no" questions. If I
19 ask you to explain, then it's your turn. Okay?

20 A. Yes.

21 Q. Thank you.

22 All right. Do you recognize Exhibit 512?

23 A. Yes.

24 Q. Do you recall approximately when you received Exhibit 512?

25 A. Sometime in -- probably later March, mid-March.

1 Q. What's the date on this letter that seems to be addressed
2 to you at 1306 Sanderling?

3 A. March 18, 2001.

4 Q. And can you tell the ladies and gentlemen of the jury what
5 is this -- Let's see. It's -- Looks like an 11-page letter to
6 you from Thomas L. Price, LLD.

7 What is it?

8 A. It's an opinion letter from somebody who has had some
9 legal experience and supports the findings.

10 MR. SAMPSON: Objection, based on foundation, Your
11 Honor.

12 THE COURT: Sustained. Sustained.

13 BY MR. COHAN:

14 Q. Well, is this a letter that you obtained from someone who
15 you believed had expertise in determining whether there was a
16 law that required you to file income taxes?

17 A. Yes.

18 Q. And do you recall how you were able to locate the author
19 of this letter, Thomas L. Price, LLD?

20 A. No.

21 Q. Do you recall receiving it and reading it in late March of
22 2001?

23 A. Yes.

24 Q. Was this during the period of time when you were trying to
25 decide whether you were going to stop filing income tax

1 returns?

2 **A.** In the midst of it, yes.

3 **Q.** Okay. Did you rely on this letter in any way, shape, or
4 form for your ultimate decision to decide to stop filing?

5 **A.** Yes.

6 **MR. COHAN:** Move its admission, Your Honor.

7 **THE COURT:** All right. Any objection?

8 **MR. SAMPSON:** Not -- No, Your Honor.

9 **THE COURT:** Admitted.

10 (Defendant's Exhibit 512 received in evidence)

11 **BY MR. COHAN:**

12 **Q.** Inviting your attention to Exhibit 513, do you have that
13 before you?

14 **A.** Yes.

15 **Q.** Do you recognize it?

16 **A.** Yes.

17 **Q.** What is it?

18 **A.** It's another opinion letters from another attorney or -- a
19 legal -- somebody in the legal profession.

20 **Q.** Okay. And do you recall how you contacted this attorney
21 whose name appears to be Gerald P. Aurillio in Metairie,
22 Louisiana?

23 **A.** Not at this point in my life?

24 **Q.** Okay.

25 **A.** I don't recall.

1 Q. Do you recall receiving this letter in late March or early
2 April 2001?

3 A. Yes.

4 Q. Is -- Is it your understanding that this is the opinion of
5 somebody who is an attorney licensed to practice law in
6 Louisiana?

7 A. Yes.

8 Q. And did it address the issue of whether there was or was
9 not a law that required you to file an income tax return?

10 A. Yes.

11 Q. And can you summarize whether there was an opinion that
12 said you didn't have a requirement to file an income tax
13 return?

14 MR. SAMPSON: Objection, calls for hearsay. The
15 witness has testified that he relied on it.

16 THE COURT: Yes, that's all that's --

17 MR. COHAN: I'll move its admission at this time,
18 Exhibit 513.

19 THE COURT: Admitted. I assume, Mr. Sampson, you
20 have no objection to this one either.

21 MR. SAMPSON: No, Your Honor.

22 THE COURT: All right. Admitted.

23 (Defendant's Exhibit 513 received in evidence)

24 MR. COHAN: Okay. May I publish briefly, Your Honor?

25 THE COURT: Yes.

(Exhibit published.)

BY MR. COHAN:

Q. Do you know whether you paid money for this attorney's opinion letter that's before us now and has been admitted as Exhibit 513?

A. Yes.

Q. Do you know how much?

A. I think it was part of a package. I don't know how much.

Q. Okay. Did you get this -- Well, strike that.

Was -- Did you receive this letter before you met Peymon Mottahedeh?

A. Yes.

Q. Was it before you'd even heard of Freedom Law School?

A. Yes.

Q. So did this letter influence your beliefs about whether there was a law that required you to file an income tax return?

A. Yes.

Q. Okay. Move on.

THE COURT: All right. Counsel, I think at this time we're going to take a 15-minute break.

MR. COHAN: Thank you.

(The following proceedings were heard out of the presence of the jury:)

THE COURT: All right. As slow as this is going,

1 it's very clear it's not even likely we're going to finish
2 with this witness's testimony on direct today, much less
3 cross.

4 **MR. COHAN:** Oh, we'll finish direct, Your Honor.

5 **THE COURT:** You'll finish direct?

6 **MR. COHAN:** Yes.

7 **THE COURT:** But that still leaves cross for Monday,
8 so we have to decide what to do about juror -- Juror No. 5.
9 Have you all given it some consideration?

10 **MR. SAMPSON:** We have, Your Honor. Now, we know that
11 this may -- almost definitely will continue into Monday. We
12 think that it would not be appropriate at this time to dismiss
13 that juror. He indicated that he had a conflict that he would
14 have to leave for at 2:15 on Monday.

15 **THE COURT:** And do any of you recall if he told us
16 that?

17 **MR. COHAN:** He did not.

18 **THE COURT:** There was -- the 22nd was the only date I
19 recall there being a conflict stated by a juror.

20 Do you remember, Nichole?

21 **THE CLERK:** I don't recall.

22 **THE COURT:** I don't.

23 **MR. COHAN:** There was no conflict with Monday, Your
24 Honor. That's my very clear recollection. You told the jury
25 that we would likely go into Monday.

1 **THE COURT:** Right.

2 **MR. SAMPSON:** But the court did not tell the jury
3 that we would go all day on Monday.

4 **THE COURT:** No, I told them the first and last day of
5 trial, we always go all day.

6 **MR. SAMPSON:** I understand.

7 **THE COURT:** I don't know. Maybe he just forgot that.

8 **MR. SAMPSON:** I don't know what we told the jury when
9 the last day would be.

10 **THE CLERK:** Judge, he did -- he had to have known
11 because he did ask me about it about a week or so ago. And I
12 had told him I would suggest that he reschedule the
13 appointment. I said, otherwise, I don't know if an
14 accommodation can be made.

15 **THE COURT:** Right.

16 **THE CLERK:** So --

17 **THE COURT:** Okay.

18 All right. Would you all like -- I mean, I'd still
19 ideally like to conclude on Monday if we can. And if we just
20 have the cross-examination, there certainly will be adequate
21 time to giving closing arguments, to instruct the jury, and
22 for them to commence their deliberations. I mean, I'd still
23 like to be able to do that.

24 So would you like me to bring him out and indicate to him
25 that I'm not going to excuse him, even if we go all day?

1 **MR. SAMPSON:** I -- I think that's appropriate, Your
2 Honor.

3 **MR. COHAN:** I agree.

4 **THE COURT:** Okay.

5 **MR. KLUGE:** The only other option we discussed during
6 the break, Mr. Cohan and I --

7 (Off-the-record discussion.)

8 **MR. KLUGE:** -- is that would it be appropriate
9 perhaps to -- while -- to work all day on Monday or continue
10 to have Monday to be a full day, but to take a late lunch
11 break at 1:30, like we've done in the past, and allow the
12 juror who has the doctor's appointment to go to his doctor's
13 appointment sort of over our lunch hour, then come back --

14 **THE COURT:** His appointment's at 2:45, and he needs
15 to leave here at 2:30. I'm sorry. 2:15, is what he says. So
16 if he left here at 2:15, went to an appointment -- when is the
17 last time you went to a doctor's appointment and were called
18 as soon as you walked in the door.

19 **MR. KLUGE:** It's been a while, Your Honor. Yes.

20 **THE COURT:** Exactly. So I -- No, we can't -- We
21 can't do that. We'd have to adjourn no later than 2:15, and
22 that would shorten our day by two and a half hours, which is
23 substantial if we're trying to conclude the case.

24 **MR. KLUGE:** Yes, Your Honor.

25 **THE COURT:** Okay.

1 All right. Why don't you bring -- bring him out. And
2 we'll indicate to him what our plan is.

3 Mr. Grant, why don't you step down, please.

4 **MR. COHAN:** Thank you, Your Honor.

5 (Juror Smith is present in the courtroom.)

6 **THE COURT:** Mr. Smith, if you could just have a seat.
7 I got your note about --

8 **A JUROR:** Yes.

9 **THE COURT:** -- your conflict on Monday.

10 **A JUROR:** Yes.

11 **THE COURT:** And none of us can recall you telling us
12 that you had a conflict on this Monday.

13 **A JUROR:** I told her.

14 **THE COURT:** A week or so ago, but not before you were
15 impaneled. And I -- and I told everyone that the first and
16 last day of trial are full days so we cannot permit you to
17 leave at 2:15 on Monday, and it's a full day because that's
18 the last day of trial.

19 **A JUROR:** Well --

20 **THE COURT:** We are anticipating having the conclusion
21 of the evidence, the closing arguments, jury instructions, and
22 deliberations to commence.

23 **A JUROR:** I have -- I had to wait six weeks for the
24 appointment. I'll have to wait another six weeks to get it
25 re-appointed, and I can't really do that. I need to have this

1 condition treated.

2 **THE COURT:** Okay. I can't excuse you for -- for
3 Monday.

4 **A JUROR:** I also have to pay a penalty of \$75 for
5 missing the appointment.

6 **THE COURT:** Okay. We'll see if there's any way that
7 court can reimburse you for that, but I cannot excuse you
8 given that you didn't tell me that before you were impaneled.

9 And I did indicate that the day was a full day for the
10 last day, and --

11 **A JUROR:** I understood that the jury term was to last
12 through the 17th. I didn't expect this to be a conflict.

13 **THE COURT:** No. The only dates that were given was
14 that we anticipated the trial would be approximately two
15 weeks. The only date that was mentioned was the gentleman who
16 was catching a flight on the 24th. One other person told us
17 they had an appointment on the 22nd.

18 **A JUROR:** The summons was from the 6th through the
19 17th.

20 **THE COURT:** The summons sated that?

21 **A JUROR:** Yes, I can produce it if you would like.

22 **THE COURT:** Yeah, I'll definitely need to see that.
23 But notwithstanding that, I cannot excuse you for Monday. And
24 I'll see if the court can reimburse you for the fee, but you
25 will need to try to make another appointment.

1 **MR. COHAN:** Can you help him do that? Would the
2 court order --

3 **A JUROR:** Could I --

4 **THE COURT:** Perhaps I could, yes.

5 **MR. COHAN:** Could you --

6 **A JUROR:** Could I leave my appointment and come back.

7 **THE COURT:** But we were talking about that, but you
8 said your appointment --

9 **A JUROR:** My appointment is actually for 3:15. I
10 have to check in at -- at 2:45.

11 **THE COURT:** And -- And you think that you would be
12 back.

13 **A JUROR:** It's allergy testing. I don't know how
14 long it will take.

15 **THE COURT:** Yeah, I think it's probably not likely
16 you'd be back by -- if your appointment's at three something.

17 **A JUROR:** -- probably would not be back before 4:00
18 o'clock, yes.

19 **THE COURT:** Right. Right.

20 **A JUROR:** It's in Berkeley.

21 **THE COURT:** If you would like, I would indeed attempt
22 to assist you in procuring another appointment if you want to
23 give me that information.

24 **A JUROR:** Okay. I can't give it to you today. I can
25 give it to you Monday or tomorrow.

1 **THE COURT:** Okay. But --

2 **A JUROR:** I think it's hard making --

3 **THE COURT:** It's hard doing it on -- day before.

4 **A JUROR:** -- scheduling it to the weekend.

5 **MR. COHAN:** What about this afternoon.

6 **THE COURT:** That's what I'm saying, this afternoon.

7 Even if you don't have it now, you're going to be excused at
8 1:30. Can you call or text us with that number and your
9 doctor's name today so that I can make contact with the office
10 today?

11 **A JUROR:** I can try.

12 **THE COURT:** Okay. All right.

13 Then that -- I would be willing to do that for you. And
14 like I said, I'll see if the court can reimburse you for
15 the -- the penalty that you're going to have to pay.

16 All right. Thank you.

17 All right. Please continue with your break. We have a
18 few minutes and -- and our court reporter needs a few, so
19 everybody take --

20 Raynee, is ten enough?

21 (Off-the-record discussion.)

22 **THE COURT:** Okay. Take a ten-minute break.

23 (Recess taken at 12:11 P.M.; proceedings resumed at 12:24
24 P.M.)

25 (The following proceedings were heard in the presence of

1 the jury:)

2 **THE CLERK:** Please be seated and come to order.

3 **THE COURT:** All right. Mr. Cohan, please continue.

4 **MR. COHAN:** Thank you.

5 **Q.** Do you have Exhibit 522 in your book?

6 **A.** (Reviewing document.)

7 **Q.** May be in Mr. Mottahedeh's?

8 (Pause in the proceedings.)

9 **MR. COHAN:** Ah, it's in the other binder. It's okay.

10 **Q.** You heard Mr. -- don't look for it. It's in the other
11 binder. I have the original in my hands. I just need to get
12 your attention and ask you a couple questions.

13 Did you hear Mr. Mottahedeh testify about Joe Bannister's
14 report, the 95-page report --

15 **A.** Yes.

16 **Q.** -- that he spoke about?

17 **A.** Whoops.

18 **Q.** Did you receive a copy of that report from Freedom Law
19 School sometime in 2003?

20 **A.** Yes.

21 **MR. COHAN:** May I approach, Your Honor?

22 **THE COURT:** Yes.

23 **BY MR. COHAN:**

24 **Q.** I'm handing you what's been marked for purposes of
25 identification as Exhibit 522.

1 Do you recognize 522? Take a moment.

2 **A.** (Reviewing document.)

3 Yes, this looks like a first edition.

4 **Q.** Is that the one that you actually gave me that you
5 received from Freedom Law School in 2003?

6 **A.** (Reviewing document.)

7 I feel like I had a second edition, but --

8 **Q.** Well, did you get both editions?

9 **A.** Yes, I did eventually.

10 **Q.** Okay. We're only offering this one right now. Do you
11 recognize it?

12 **A.** Oh. Yes.

13 **Q.** Did you rely on it for your determination to continue not
14 to file tax returns?

15 **A.** Yes.

16 **MR. COHAN:** Move its admission, Your Honor.

17 **THE COURT:** All right.

18 **MR. SAMPSON:** Your Honor, we have -- I guess we're
19 talking about this (indicating). This is what we have.

20 **MR. COHAN:** That's exactly what we're talking about.

21 **MR. SAMPSON:** Okay. It's not in a binder, but, Your
22 Honor, I object because it's both cumulative. It's a 90-page
23 document with legal materials in it. And it's also vague as
24 to when the defendant received this version.

25 **THE COURT:** Can you establish when he received it?

1 **MR. COHAN:** I can.

2 **Q.** Do you recall receiving both this version that's marked as
3 Exhibit 522 and another version that's marked as Exhibit 523?

4 **A.** Yes.

5 **Q.** Do you recall whether you received those shortly after
6 joining Freedom Law School?

7 **A.** I received one of them.

8 **Q.** Do you know which one you received first?

9 **A.** I don't know.

10 **Q.** That's a "yes"?

11 Okay. If you don't know you don't know.

12 Do you recall that you received them roughly at the same
13 time, or were they years apart?

14 **A.** No, they were pretty concurrent.

15 **Q.** Is there, other than the cover, any real difference in the
16 contents between Exhibits 522 and 523?

17 **A.** Type font. That's pretty much all's I noticed.

18 **Q.** Okay.

19 I'll move them both into evidence then, Your Honor,
20 Exhibit 522 and 523.

21 **THE COURT:** Objection.

22 **MR. SAMPSON:** Yes, Your Honor. So obviously one is
23 exactly cumulative of the other.

24 **THE COURT:** Exactly.

25 **MR. COHAN:** Fine.

1 **THE COURT:** He's simply trying to make to point of
2 the volume of information that Mr. Grant had. I ruled
3 pretrial that I would allow him to put on some of it.

4 These documents comprise "some of it." Objection
5 overruled. They can both come in.

6 (Defendant's Exhibits 522, 523 received in evidence)

7 **MR. COHAN:** Okay.

8 Now, Mr. Garland, can you put up Exhibit 358?

9 My other book.

10 (Exhibit published.)

11 **BY MR. COHAN:**

12 **Q.** Okay. Mr. Grant, take a look at Exhibit 358.

13 And, Mr. Garland, can you flip to the second page of this
14 exhibit, please.

15 (Exhibit published.)

16 **THE WITNESS:** 3 -- What is it?

17 **BY MR. COHAN:**

18 **Q.** It's Exhibit 358. I don't believe you have the -- the
19 right volume up there. I need to get you one, too.

20 (Off-the-record discussion.)

21 **MR. COHAN:** Thank you.

22 **Q.** Mr. Sampson has just given me the one that -- Well,
23 anyway, I have another copy.

24 May I approach, Your Honor?

25 **THE COURT:** Yes.

1 **MR. COHAN:** All right.

2 **Q.** Handing you what's been marked and admitted as Exhibit
3 358, do you recognize this?

4 **A.** Yes, that's my handwriting.

5 **Q.** Okay. And --

6 **A.** Or.

7 **Q.** Do you recall the circumstances under which -- now, this
8 is in evidence so you can refer to it.

9 Do you recall the circumstances under which you actually
10 put pen to paper and wrote this response from Randall Grant to
11 Special Agent Moran?

12 **A.** Yes. My brother received -- Whoops, sorry.

13 **Q.** "Yes" was the answer?

14 **A.** Yes.

15 **Q.** What were the circumstances that lead you to write in your
16 own hand a letter for Randall Grant?

17 **A.** My brother received a request or summons for materials
18 that he didn't have in his possession. He contacted Freedom
19 Law School and talked to -- I believe it was an intern or
20 whatever they -- the people who work there.

21 I believe they then may have talked to Peymon and given me
22 the verbiage. I wrote it down, then transcribed it into this
23 letter.

24 **Q.** Okay. And the signature of Randall Grant at the bottom of
25 the page, did you write that, or did your brother Randall

1 write that?

2 **A.** I put this letter on his desk. And he -- I said if you
3 want to sign this, this will take -- this should take care of
4 it because he didn't have the item on his -- I mean, in his
5 possession. And the last thing I recall him saying is that he
6 didn't necessarily want to turn it in.

7 **MR. SAMPSON:** Objection.

8 **THE WITNESS:** He wasn't going to use it.

9 **MR. SAMPSON:** Your Honor, hearsay.

10 **THE COURT:** Sustained. The jury should disregard the
11 last statement.

12 **BY MR. COHAN:**

13 **Q.** Did you sign this letter, or did your brother?

14 **A.** I didn't sign it.

15 **Q.** Okay. Do you know what happened to it after you gave it
16 to your brother?

17 **A.** No.

18 **Q.** Okay.

19 Now, let's go to Exhibit 359, please, Mr. Garland.

20 (Exhibit published.)

21 **BY MR. COHAN:**

22 **Q.** And you can look on the screen, save time.

23 **A.** (Reviewing document.)

24 Should I see it on this? Should I be able to see it on
25 this screen? Can -- I can't really read it too well.

1 **MR. COHAN:** May I approach, Your Honor?

2 **THE COURT:** Yes.

3 **BY MR. COHAN:**

4 **Q.** I'll show you mine.

5 **A.** (Reviewing document.)

6 **Q.** Okay. Mr. Grant, take a moment and review those two
7 pages. I'll let you just keep my copy for the moment.

8 **A.** (Reviewing document.)

9 **Q.** Is there a second page?

10 Can you turn to that page, Mr. Garland, please.

11 (Exhibit published.)

12 **MR. COHAN:** Thank you.

13 **Q.** Do you see the signature on the second page, sir?

14 **A.** I do.

15 **Q.** And did you see your brother sign his name to this?

16 **A.** No.

17 **Q.** Did you sign it for him?

18 **A.** No.

19 **Q.** So you don't know who signed his name.

20 **A.** No.

21 **Q.** Do you know the circumstances pursuant to which this
22 Exhibit 359 was prepared?

23 **A.** (Reviewing document.)

24 It's a -- It's a response to a summons -- I'm reading it
25 here.

1 Q. Okay. Did you provide the summons that your brother
2 received?

3 Did he give it to you, first of all?

4 A. No.

5 Q. Do you know --

6 A. I don't recall. I mean, I -- don't know.

7 Q. Okay. You don't know.

8 So you don't know who prepared this Exhibit 359?

9 A. I have no memory of it.

10 Q. Okay. So you don't recall sending the summons to
11 Mr. Mottahedeh?

12 A. No.

13 Q. Okay.

14 So your testimony is you don't know what happened with
15 respect to this?

16 MR. SAMPSON: Asked and answered, Your Honor.

17 THE COURT: Sustained.

18 MR. COHAN: Okay.

19 THE COURT: Is 359 already in evidence?

20 MR. COHAN: It is.

21 THE COURT: Okay.

22 MR. COHAN: Okay.

23 We're almost done with the direct. Just one more exhibit
24 we need to go through.

25 THE COURT: Okay.

1 **BY MR. COHAN:**

2 **Q.** Now, Mr. Grant, you received correspondence from the
3 Internal Revenue Service and the Franchise Tax Board telling
4 you that you were supposed to be filing tax returns in 2004,
5 2005, correct?

6 **A.** Yes.

7 **Q.** Did you see something on the Internet called Freedom to
8 Fascism that was produced by Aaron Russo in September 2006?

9 **A.** Yes.

10 **MR. SAMPSON:** Objection, Your Honor. It's leading.

11 **THE COURT:** Overruled.

12 **MR. COHAN:** And --

13 **THE WITNESS:** Yes.

14 **BY MR. COHAN:**

15 **Q.** Did you then download that -- Well, strike that.

16 First of all, you saw this video, Freedom to Fascism, back
17 in 2009 (sic).

18 How many times did you see it, do you know?

19 **A.** Probably twice. It's a feature-length -- Am I allowed to
20 keep talking?

21 **Q.** You are.

22 **A.** It's a feature-length documentary.

23 **Q.** Okay.

24 **A.** And it takes -- it takes, you know, time.

25 **Q.** Couple hours?

1 **A.** Yes.

2 **Q.** Okay. At my request, did we prepare a download of the
3 entire thing and ask that you go through it and find just the
4 smallest number of excerpts or excerpt that epitomized what
5 was important out of that video that you relied on for your
6 belief that there's no law requiring the filing of income tax
7 returns?

8 **A.** Yes.

9 **Q.** Okay. And you've seen, then, what's been marked for
10 purposes of identification as 537 and 537A, which are the
11 excerpt that we prepared for you, right?

12 **A.** I have the transcripts here.

13 **Q.** Okay.

14 **MR. COHAN:** Okay. Move the admission and the playing
15 of Exhibit 537A. And that's the last thing I have before I
16 tender the witness, Your Honor.

17 **THE COURT:** And how long is it?

18 **MR. COHAN:** It's ten minutes. Ten minutes.

19 **THE COURT:** All right.

20 **MR. SAMPSON:** I object, Your Honor. It's cumulative.
21 At the very last break, we were now given a transcript of --
22 of this document. So the government will be reading it along
23 with the jury as it's -- as it's heard.

24 **THE COURT:** Are you saying that you were not given
25 the CD before trial?

1 **MR. SAMPSON:** We were given the CD a couple weeks
2 ago, Your Honor.

3 **THE COURT:** Okay.

4 **MR. SAMPSON:** But these excerpts, this transcript,
5 was just handed to us.

6 **THE COURT:** Okay.

7 **MR. SAMPSON:** And we're not sure --

8 **THE COURT:** Objection --

9 **MR. SAMPSON:** Okay.

10 **THE COURT:** Objection overruled.

11 All right. This is last excerpt. You did mis -- and I
12 think you asked him twice about when he viewed this. And the
13 first time you said September of 2006. The second time --

14 **MR. COHAN:** Did I say September?

15 **THE COURT:** -- 2009.

16 **MR. COHAN:** No.

17 **THE COURT:** Well, that's -- that's what Raynee
18 recorded. You asked him the question twice, and you used
19 different dates each time, so please clarify the date at which
20 he saw it.

21 **BY MR. COHAN:**

22 **Q.** You saw it in -- in September of -- Excuse me.

23 Do you know what month in 2006 you saw it?

24 **A.** It was the end of the -- end of the year. I don't recall
25 exactly the month.

1 Q. But was it 2006?

2 A. As I recall.

3 Q. Okay. Thank you.

4 THE COURT: All right. Go ahead. Play it.

5 (Pause in the proceedings.)

6 (Video playing.)

7 THE COURT: All right. Anything else?

8 MR. COHAN: Nothing further, Your Honor.

9 THE COURT: All right. Cross?

10 (Pause in the proceedings.)

11 **CROSS-EXAMINATION**

12 BY MR. SAMPSON:

13 Q. Hello, Mr. Grant.

14 A. Hello.

15 Q. You saw that video, the one we just watched, in September
16 2006?

17 A. Approximately.

18 Q. Six years after you stopped paying your taxes.

19 A. Well, that just was more --

20 Q. Please answer the question.

21 A. Yes.

22 Q. All of your income comes from Grant Engineering, does it
23 not?

24 A. As --

25 MR. COHAN: Object to the form of the question. It

1 assumes that income is the definer. It's gross income.

2 **THE COURT:** Overruled.

3 **MR. SAMPSON:** The witness -- Can the witness answer?

4 **THE COURT:** He may answer.

5 **THE WITNESS:** For the most part.

6 **BY MR. SAMPSON:**

7 **Q.** Grant Engineering was a full-time job for you, was it not?

8 **A.** As far as revenue earning, yes.

9 **Q.** Your wife wasn't working from 2000 to 2009, was she?

10 **A.** No.

11 **Q.** You worked at the 400 Ohio Avenue of -- facility of Grant
12 Engineering, correct?

13 **A.** Yes.

14 **Q.** You hired employees?

15 **A.** Yes.

16 **Q.** You dealt with HR issues, human resources issues?

17 **A.** Yes.

18 **Q.** Like giving them Forms (sic) W9 (sic) to change their
19 withholdings?

20 **A.** If they requested.

21 **Q.** You distributed paychecks?

22 **A.** Yes.

23 **Q.** You invoiced the clients?

24 **A.** 2006....

25 **MR. COHAN:** Can we have a time period?

1 **BY MR. SAMPSON:**

2 **Q.** Are you --

3 **THE COURT:** Is there a time period that you're
4 seeking, or for this entire time?

5 **BY MR. SAMPSON:**

6 **Q.** Was there ever a time when you didn't invoice the clients?

7 **A.** Once we got our bookkeeper Robin Anderson.

8 **Q.** And when was that?

9 **A.** I don't exactly recall.

10 **Q.** From 2005 to 2009, did you send invoices to clients?

11 **A.** There might have been a small portion of that where Robin
12 did, but -- I would say yes.

13 **Q.** 2005 to 2009, did you manage the shipping?

14 **A.** I had help with the -- my -- all my people.

15 **Q.** Did you manage the shipping?

16 **A.** I don't understand "manage" it.

17 **Q.** Did you -- Did you -- Did you oversee employees who
18 conducted the shipping at Grant Engineering?

19 **A.** Yes.

20 **Q.** You had employees working under you at Grant Engineering,
21 correct?

22 **A.** Yes.

23 **Q.** And you wrote checks on Grant Engineering check --
24 checkbooks, correct?

25 **A.** Yes.

1 Q. And from 2005 to 2009, did you keep the bank accounts
2 balanced?

3 MR. COHAN: Is that personal or Grant Engineering?

4 MR. SAMPSON: It's Grant Engineering.

5 THE COURT: All right.

6 THE WITNESS: I think it was confirmed by
7 bookkeeping, Carol Zinck.

8 BY MR. SAMPSON:

9 Q. After you did it, correct?

10 A. Yeah, they made sure everything was accurate.

11 Q. You approved the payroll?

12 A. Could you define all -- what -- the payroll is.

13 Q. You signed checks for employee salaries, correct, wages?

14 A. Yes.

15 Q. You talked to clients?

16 A. Yes.

17 Q. You talked to officials at BioRad?

18 A. Yes.

19 Q. On behalf of Grant Engineering?

20 A. "Officials."

21 Q. Employees of BioRad Engineering, the client?

22 A. Yeah. Yes.

23 Q. You did you take deposits to the bank to deposit for Grant
24 Engineering?

25 A. Yes.

1 Q. Did you make deliveries for Grant Engineering?

2 A. Yes.

3 Q. Did you purchase equipment for Grant Engineering?

4 A. Some.

5 Q. The business had over a million dollars in gross receipts
6 through the 2000's, did it not?

7 A. I don't know in the early 2000's, but -- it had -- during
8 that 2005 to 2009, I would say I believe so.

9 Q. And in 2009, it actually broke \$2 million in gross
10 receipts, did it not?

11 A. I don't recall.

12 Q. The profits were split between you and your brother
13 Randall, correct?

14 A. Yes.

15 Q. And you were each 50 percent partners?

16 A. Yes.

17 Q. And in the 1990's and early 2000's -- Well, let me -- Let
18 me rephrase. You were the tax matters partner for Grant
19 Engineering; is that right?

20 A. What is tax matters?

21 Q. I'm not -- I'm not answering questions. Were you a tax
22 matters partner for Grant Engineering?

23 A. I don't understand.

24 Q. If tax returns were prepared listing your name as the tax
25 matters partner for Grant Engineering, would they be wrong?

1 **MR. COHAN:** Object, lack of a explanation. What does
2 "tax matters partner" mean?

3 **THE COURT:** He's pursuing it. Overruled.

4 **THE WITNESS:** I don't know.

5 **BY MR. SAMPSON:**

6 **Q.** Have you ever seen your --

7 **A.** I'm sorry. I just don't know what --

8 **Q.** Have you ever seen your name listed as a tax matters
9 partner for Grant Engineering?

10 **A.** No. I mean, it's hard to believe. Can't --

11 **Q.** Payroll tax returns were filed by Carol Zinck & Associates
12 for Grant Engineering, correct?

13 **A.** Repeat.

14 **Q.** Grant Engineering payroll tax returns were filed by Carol
15 Zinck & Associates Bookkeeping; is that correct?

16 **A.** I believe so.

17 **Q.** And you wrote checks approving payments to Carol Zinck &
18 Associates for that service, correct?

19 **A.** Correct.

20 **Q.** You never told them to stop doing that?

21 **A.** No.

22 **Q.** Now, Morre & Company C.P.A. has prepared Grant
23 Engineering's partnership tax returns since the early 1990's;
24 is that right?

25 **A.** I believe so.

1 Q. And you understand that Morre -- John Morre and Linda
2 Panichelli were C.P.A.'s correct?

3 A. Yes.

4 Q. And you paid them thousands of dollars a year to prepare
5 those returns, correct?

6 A. Thousands? 2,000.

7 Q. Per year?

8 A. Per year.

9 Q. And you spent time talking on the phone to Linda
10 Panichelli?

11 A. Yes.

12 Q. And to Doug Woodcox?

13 A. Yes.

14 Q. And they asked you questions?

15 A. If they had a question.

16 Q. And you would answer that, correct?

17 A. Of course.

18 Q. And you understood that -- that these discussions were to
19 help them prepare, correct, Grant Engineering partnership tax
20 returns, correct?

21 A. Yes.

22 Q. That's what you paid them to do?

23 A. To the best of their ability, yes.

24 Q. And Morre & Company did prepare those returns?

25 A. Yes.

1 Q. And up through 2002, you filed the federal partnership tax
2 returns, didn't you?

3 A. Yes.

4 Q. And Morre C.P.A. prepared your personal income tax returns
5 up through 2000; isn't that right?

6 A. I believe so.

7 Q. And you knew that you could ask Morre & Company for tax
8 advice, correct?

9 A. I didn't think of them as tax advisers, but they were tax
10 preparers.

11 Q. You paid them to prepare your tax returns?

12 MR. COHAN: Asked and answered.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. SAMPSON:

16 Q. And before your 2000 income tax return was due, you
17 informed them you didn't need their services anymore; isn't
18 that right?

19 A. That's right.

20 Q. You had already decided that you were done filing taxes
21 and paying them, correct?

22 A. I had serious questions.

23 Q. Is that a "yes"?

24 A. Yes.

25 Q. And you didn't share that with Morre & Company C.P.A. when

1 you terminated their services for your income tax returns, did
2 you?

3 A. I did not.

4 Q. And you didn't ask Morre & Company to review your
5 questions about the tax laws, did you?

6 A. No.

7 Q. And even after you stopped paying Morre to prepare your
8 personal income tax returns, Grant Engineering kept paying
9 Morre to prepare the partnership tax returns; is that right?

10 A. Yes.

11 Q. And they been preparing them up through the present?

12 A. Yes.

13 Q. And you knew you could call them and ask their advice?

14 A. I didn't wish to get their advice.

15 Q. You knew they were C.P.A.'s.

16 A. Doesn't mean a lot to me.

17 Q. That's not responsive.

18 A. Could you say it again. I'm sorry.

19 Q. You knew they were C.P.A.'s, correct?

20 A. Yeah, they have "C.P.A." after their name, sure.

21 Q. And you never once asked anyone at Morre if you were
22 required to file a tax return, did you?

23 A. No.

24 Q. And you never once asked them if you thought the income
25 tax was legal?

1 **A.** No.

2 **Q.** And you never shared with them any of the material that
3 you claim to have relied on, did you?

4 **A.** Absolutely not.

5 **Q.** You kept sending K1's to your brother so that he could
6 file his tax returns, didn't you?

7 **A.** Yes. He wanted a K1.

8 **Q.** And you received your K1's from Morre, did you not?

9 **A.** They were in the packet.

10 **Q.** So you received them?

11 **A.** Yes. Yes.

12 **Q.** And they stated on them what your income from the
13 partnership was, did they not?

14 **A.** I believe so.

15 **Q.** And at some point, in 2008, you worked with Doug Woodcox
16 on a California Enterprise Zone credit for the California
17 partnership tax return for Grant Engineering, did you not?

18 **A.** I believe so, yes.

19 **Q.** And you had not filed a California partnership tax return
20 for Grant Engineering since 2001, had you?

21 **A.** No.

22 **Q.** You would get instructions from Morre on how to file every
23 year, correct?

24 **A.** Yes.

25 **Q.** And in 2002, you filed a federal return for Grant

1 Engineering partnership, did you not?

2 A. It's been a while, but I'll -- I'll agree.

3 Q. But in that year, you did not file a California 2002
4 partnership return, did you?

5 A. Can't remember.

6 Q. You can't remember whether you stopped filing California
7 one year before you stopped filing federal?

8 A. No.

9 Q. Now, by the time the 2000 California partnership tax
10 return was due, you had already received a letter from the
11 California Franchise Tax Board, had you not?

12 A. I don't remember.

13 Q. Let me show you Exhibit 76.

14 (Exhibit published.)

15 BY MR. SAMPSON:

16 Q. Did you receive this letter sometime shortly after
17 September 16th, '02?

18 A. I don't remember.

19 Q. This was before you were a member of Freedom Law School?

20 A. The date you mean?

21 Q. Yes, 2000 -- Yes, September 2000 --

22 A. Yes. Yes.

23 Q. You concealed from Randall Grant that you had stopped
24 filing the partnership tax returns, didn't you?

25 MR. COHAN: Object to the form of the question.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** He did not ask. I didn't say anything.

3 **BY MR. SAMPSON:**

4 **Q.** But you kept giving him the K1's?

5 **A.** He wanted to file, yes.

6 **Q.** Now, you continued to have Morre C.P.A. prepare the
7 partnership tax returns up through 2009, did you not?

8 **A.** And beyond, yes.

9 **Q.** And in 2009, you received a letter from Morre saying that
10 they wanted to switch you to e-filing those partnership tax
11 returns, did you not?

12 **A.** I remember something about e-file, the new -- latest thing
13 or something.

14 **Q.** Yes. And you didn't want them to do that, did you?

15 **A.** I don't like electronic filing. I don't like things out
16 in the ethers, so I -- I was not for it.

17 **Q.** Well, you didn't like paper filing either, did you?

18 **A.** I don't -- I don't really follow.

19 **Q.** You weren't filing, were you?

20 **A.** That's correct.

21 **Q.** You called and told Morre that you preferred to paper
22 file, did you not?

23 **A.** Seems -- Seems accurate, yes.

24 **Q.** But that was a lie, wasn't it?

25 **A.** No.

1 Q. It was a lie that you told them to --

2 A. Oh.

3 Q. -- paper file?

4 A. Oh, no, no. I said -- I said -- I mean, I -- I mean, I
5 did say continue to paper file.

6 Q. And that was a lie, was it not?

7 A. I didn't consider it a lie about anything.

8 Q. You told Morre that you would continue to paper file the
9 partnership tax returns?

10 A. I just said I didn't want to file paper -- I mean, file
11 e-file.

12 Q. Prior to 2001, you made estimated tax payments to the IRS
13 quarterly, did you not?

14 A. Repeat.

15 Q. Prior to 2001, you made quarterly estimated federal tax
16 deposits for your personal income taxes, did you not?

17 A. I don't recall, but for argument sake, yes. Is that --

18 THE COURT: No, that's not appropriate. Either you
19 recall or you don't recall.

20 THE WITNESS: I don't absolutely recall.

21 BY MR. SAMPSON:

22 Q. You don't know whether you made the tax deposits before
23 2001?

24 A. I could have, but I don't recall.

25 Q. You know that you stopped by the end of 2000; isn't that

1 right?

2 **MR. COHAN:** Object to the form of the question as --
3 presupposes that he knows the prior period. He just said he
4 didn't.

5 **THE COURT:** Overruled.

6 I'm going to give him as much as leeway as I gave you as
7 to the form of the question.

8 **THE WITNESS:** Could you repeat that again?

9 **BY MR. SAMPSON:**

10 **Q.** When did you stop paying income tax?

11 **A.** I don't really fully recall. I mean, once it becomes --
12 Oh, I'm sorry just running on.

13 **Q.** In 2000, you were still earning money from the Grant
14 Engineering partnership, correct?

15 **A.** I was getting income, yes.

16 **Q.** And in 1998 -- going back, in 1998, you reported adjusted
17 gross income of \$120,000 to the IRS. Do you recall that?

18 **A.** I don't recall.

19 **Q.** Do you recall that in 1999, your income doubled?

20 **A.** No. We just worked hard.

21 **Q.** Do you recall that in 1999, your income tax doubled?

22 **A.** I don't recall.

23 **Q.** Do you recall that you paid a penalty in 1999 and
24 interest?

25 **A.** I don't remember. It's a long time ago.

1 Q. Do you recall that the last payment you ever made to the
2 IRS was that penalty and interest payment in late 2000?

3 A. I don't. And I seem to recall that they started having
4 payments to the treasury instead of IRS. That's one of -- one
5 of the few things I might actually recall.

6 Q. Okay. So when I say "IRS," IRS is a department of -- part
7 of the Department of the Treasury, so does that change your
8 answer to any of my questions?

9 A. I don't recall it.

10 Q. In 2000, you were angry that your income tax doubled; is
11 that -- is that a fair characterization?

12 A. No, I don't recall anything like that. I had probably
13 ceased volunteering anymore.

14 Q. And you had also ceased paying?

15 A. I wrote no more checks.

16 Q. Until when?

17 A. I don't recall what -- what your -- what are you -- what
18 date you're trying to get?

19 Q. When was the last time you had made a payment to the
20 Treasury for income taxes, Mr. Grant?

21 A. I don't absolutely recall.

22 Q. Now, sometime in 2001 -- Well, let me ask it this way.

23 You claim to rely on a letter from a lawyer in New Orleans
24 from 2001. Do you recall that?

25 A. Yes.

1 Q. Testifying to that?

2 A. Reviewed it here.

3 Q. And you testified that you received that sometime in March
4 2001?

5 A. Yes.

6 Q. Did you go to New Orleans to meet this lawyer?

7 A. No.

8 MR. SAMPSON: Can we show that exhibit? I think it's
9 512.

10 (Pause in the proceedings.)

11 MR. SAMPSON: I think it's 512. I'll show it on the
12 ELMO.

13 (Pause in the proceedings.)

14 (Exhibit published.)

15 BY MR. SAMPSON:

16 Q. Do you recall looking at this exhibit earlier today?

17 A. (Reviewing document.)

18 Yes. Yes.

19 Q. This is the letter from the lawyer in Louisiana?

20 A. Yes.

21 Q. And you testified that you don't recall how you found this
22 lawyer; is that right?

23 A. It may have been part of a package of materials.

24 Q. What package?

25 A. There were numerous packages of -- of materials, not from

1 Freedom Law School. I -- but from other organizations.

2 Q. Why didn't you look for a more local attorney?

3 A. They probably practice, sort of like the medical
4 profession, consensus medicine, consensus legal practice.
5 Most of these people are invested in the system, and even if
6 they were presented with this information in my opinion, they
7 would just shriek and turn away from it and -- because
8 they're -- they're getting -- you know, this is their
9 livelihood.

10 Q. So you went and found a lawyer in Louisiana that you never
11 met because he would agree with your views; is that fair?

12 A. These people didn't just agree. They supported --
13 supported --

14 Q. Is --

15 A. -- their findings.

16 Q. Please answer my question "yes" or "no."

17 Is that a fair characterization?

18 A. I -- Could you repeat?

19 Q. Did you go looking -- Did you find an attorney in
20 Louisiana to give you this opinion letter because you thought
21 he would agree with your views?

22 A. No, this was supplied as part of a package.

23 Q. And in a package was about income tax law?

24 A. I believe so.

25 Q. This is called on the first line -- it's called a reliance

1 letter.

2 A. Uh-huh.

3 Q. Do you have other reliance letters?

4 A. There's another one I believe right in here.

5 Q. You understand a reliance letter to be a defense to a
6 criminal charge; is that -- is that right?

7 A. No.

8 Q. What do you think a reliance letter is?

9 A. Just something that supports your beliefs.

10 Q. By the time you received this, you had already missed
11 estimated tax payments to the IRS; is that right?

12 A. I would say probably so.

13 Q. So you had already stopped paying income tax before you
14 got this letter?

15 A. I had other reliance materials obviously that you have
16 witnessed here in the courtroom.

17 Q. Now, did you do any research on Gerald Aurillo?

18 A. No, I --

19 Q. Yes or no, Mr. Grant?

20 A. No.

21 Q. This letter says to do your own research, does it not?

22 A. And I -- yes.

23 Q. What law library did you go to to do that research?

24 A. I did not go to a law library.

25 Q. Mr. Grant, I'm going to direct your attention to the last

1 page, 17.

2 (Exhibit published.)

3 **BY MR. SAMPSON:**

4 **Q.** It says on the second paragraph, I cannot advise you or
5 tell you not to file a Form 1040, does it not?

6 **A.** (Reviewing document.)

7 Let's see. I'm trying to find that.

8 **Q.** It's the first sentence on the second paragraph.

9 **A.** Oh, I -- I read that, yes.

10 **Q.** This is a letter that you claim to rely on?

11 **A.** In part. Not in toto.

12 **Q.** It also says in the fourth paragraph -- it's a little hard
13 to read, does it not say before you do anything or don't do
14 anything, I suggest that you seek and obtain professional
15 opinion letters on the subject from other lawyers.

16 **A.** But as you said I had already committed -- yes. Sorry.

17 **Q.** And what other lawyers did you seek an opinion from?

18 **A.** At that -- At that time, I don't think the -- the other
19 letter was from a lawyer, but they had some legal
20 understanding.

21 **Q.** Are you talking about Thomas Price?

22 **A.** Let me -- Could you refer me to that page.

23 **Q.** Well, do you recall who it was from?

24 **A.** Not at this moment.

25 **Q.** Do you recall that it was a lawyer in Florida?

1 **A.** Yes, Coral -- something Coral something.

2 **Q.** Did you ever meet that person?

3 **A.** I did not.

4 **Q.** Okay. That opinion letter cost \$50, did it not?

5 **A.** I think it was part of a package. I didn't -- I didn't
6 directly pay for any given piece of the package.

7 **Q.** If there was an advertisement in the back of the Joseph
8 Bannister book that said that Thomas Price would give opinion
9 letters for \$50, would that be wrong?

10 **A.** Perhaps it's -- it's -- no, I'm not saying it is. I just
11 didn't get it through Freedom Law School or from the back of
12 that book 'cause I didn't have that book at this time.

13 **Q.** Okay.

14 Now, let's go through this letter. This is a letter that
15 you claimed to rely on, correct?

16 **A.** In part.

17 **Q.** And did you look to determine whether this person was a
18 lawyer?

19 **A.** Reading the letter, it seemed that they had some
20 credentials and credibility. Not everybody has to be a
21 lawyer.

22 **Q.** That letter says to go to a law library, does it not?

23 **A.** Where are you reading? I can't see it.

24 **Q.** I'm asking you from your recollection.

25 **A.** I don't recall. Many years.

1 Q. It's been many years since you've relied on this?

2 A. Since I first read it and confirmed what I was looking to
3 confirm.

4 Q. Mr. Grant, the first paragraph says, I cannot advise or
5 counsel you not to file a 1040 tax return. Do you see that?

6 A. I see that.

7 Q. That didn't cause you to question the -- the letter?

8 A. I see it as a disclaimer that they all -- must all do
9 because they could be if -- if they're a lawyer, they'll be
10 disbarred. It's consensus legal practice.

11 Q. Is that a "yes" or a "no"?

12 A. I see it. Didn't dissuade me.

13 Q. It also states, I urge you to do your own research on
14 these issues. Go to your local law library.

15 Do you see that?

16 A. That's pretty standard.

17 Q. Is that a "yes"?

18 A. I see it, yes.

19 Q. It also says, I -- it is also imperative that you seek out
20 the advice -- advise (sic) and counsel of other professionals
21 such as -- such as lawyers, Certified Public Accountants,
22 enrolled agents, and the like.

23 Do you see that? On the third --

24 A. I see -- Yeah, I see that.

25 Q. But you didn't talk to Morre C.P.A. about these claims?

1 **A.** No. No.

2 **Q.** Do you recall that the Gerald Aurillo letter talks about
3 criminal prosecutions in tax cases?

4 **A.** I think you mentioned that.

5 **Q.** Do you recall it from the letter, sir?

6 **A.** I think you read that, so I do now recall it, but I don't
7 recall it from the past.

8 **Q.** He talks about a case called *Cheek*, does it not?

9 **A.** I don't see it.

10 **Q.** Do you recall it?

11 **A.** I've heard that word. It's hard to forget.

12 **Q.** It doesn't say that you would not be prosecuted, does it,
13 Mr. Grant?

14 **A.** I'm still trying to understand, you know, the *Cheek*
15 something case. I don't remember it.

16 **Q.** The letter, Mr. Grant -- the letter says, does not
17 guarantee that you won't be prosecuted, does it?

18 **A.** I don't see anything in front of me.

19 **Q.** In fact, Mr. Grant, it discusses the Assistant United
20 States' Attorney, does it not, on page 11?

21 **A.** (Reviewing document.)

22 This -- I don't know how this comes together. 17,000
23 documents to me seems to have to do with --

24 **Q.** I'm not asking you about 17,000 documents, Mr. Grant. I'm
25 asking you if it refers to the Assistant United States'

1 Attorney?

2 **A.** I believe an assistant United States Attorney who would be
3 the one to bring the case to --

4 **Q.** I'm not asking you to read it out loud, Mr. Grant.

5 **A.** Oh. Hang on.

6 (Reviewing document.)

7 Are you talking at the very top?

8 **Q.** No, Mr. Grant. I'm talking about the bottom of the
9 letter.

10 **A.** The natural flow?

11 **Q.** All right. Mr. Grant, this talks about willfulness in a
12 criminal tax case, does it not? Do you see the word
13 "willfulness" at the bottom of page 11?

14 **A.** I do see it.

15 **Q.** And this is a letter that you claim to have relied on,
16 correct?

17 **A.** I read it, and it -- it added weight to my perception that
18 there was problem with the income tax.

19 **Q.** Is that a "yes" or a letter that you claim to have relied
20 on?

21 **A.** In part, yes.

22 **Q.** In addition to the letter from I-R -- FTB dated September
23 2002, you also got letters from the IRS, correct?

24 **A.** What time frame are we talking about?

25 **Q.** Did you receive letters from the IRS?

1 **A.** Yes. And I forward them -- yes.

2 **Q.** Do you recall when you first started receiving letters
3 from the IRS about your personal income taxes?

4 **A.** No.

5 **Q.** Do you recall that they were about a Substitute for
6 Return?

7 **A.** No.

8 **Q.** Do you recall that they related to your failure to file
9 and pay income taxes for 2000 and 2001?

10 **A.** I don't remember the letters.

11 **Q.** But you recall receiving letters?

12 **A.** I feel like I -- during some time period, I certainly have
13 received letters.

14 **Q.** I didn't stop withholding the taxes of your employees
15 after you stopped paying your own, did you?

16 **A.** No.

17 **Q.** In 2000 to 2009, you were still receiving money from Grant
18 Engineering, were you not?

19 **A.** Yes.

20 **Q.** From 2005 to 2009, you were receiving almost 200,000 a
21 year, correct?

22 **A.** I think we heard a lot about that.

23 **Q.** Is that a "yes"?

24 **A.** Yes.

25 **Q.** You challenged a lien that IRS was proposing to file

1 against your house, correct?

2 A. I believe -- yes.

3 Q. And you appealed IRS's decision to the Tax Court?

4 A. With my legal documentation that was provided to me by
5 Mr. Mottahedeh.

6 Q. You know Mr. Mottahedeh was not a lawyer, correct?

7 A. He's had greater legal knowledge, but he was not a lawyer.

8 Q. And you appealed that case to the Ninth Circuit Court of
9 Appeals, did you not, when the Tax Court ruled against you?

10 A. I believe so. I believe so.

11 Q. And you lost in the Ninth Circuit, too, correct?

12 A. I don't know. I guess it's been -- it's been a long time.
13 I don't remember.

14 Q. Someone from the IRS showed up at your home in 2005; do
15 you recall that?

16 A. I do recall somebody.

17 Q. And you refused to identify yourself, didn't you?

18 A. I think I was caught off guard, and I did not exactly
19 identify Myself. It was in my house. Oops, sorry.

20 Q. Someone from the IRS called your business, didn't they?

21 A. I don't remember.

22 Q. You don't recall talking to somebody that dialed your
23 extension at your business?

24 A. I don't remember.

25 Q. Let me show you Exhibit 112.

1 (Exhibit published.)

2 (Off-the-record discussion.)

3 **BY MR. SAMPSON:**

4 **Q.** This is a letter that you sent to the Tax Court, correct?

5 **A.** I signed it. I -- I must have sent it. Yes. Yes.

6 **Q.** And in 2006, in this Tax Court case, you asked if you
7 could get an attorney provided for you, didn't you?

8 **A.** (Reviewing document.)

9 Does it say that? Could you draw my attention --

10 **Q.** The last sentence.

11 **A.** Oh. Oh. Thank you.

12 (Reviewing document.)

13 Thank you for reading my letter. Now I have a whole --

14 **Q.** You don't need to read it out loud, Mr. Grant.

15 **A.** (Reviewing document.)

16 So, like, I would probably want to have an attorney that
17 would protect my interests like Mr. Mottahedeh. I mean, a --
18 a person, so if I requested one, I must have agreed to this --
19 this letter from -- or via Mr. Mottahedeh.

20 **Q.** You didn't actually want a public defender, did you?

21 **A.** This was recommended to me, so if that's -- if it says
22 that, I -- I was confident that my -- my position was being
23 protected by somebody who cared.

24 **Q.** And this is in a year when you received \$201,000 from
25 Grant Engineering; isn't that right?

1 **A.** I don't recall, but an attorney can cost a lot of money.

2 **Q.** Yes or no, Mr. Grant?

3 **A.** Oh, I don't recall the 201,000 precisely. You have all
4 those figures at your command.

5 **Q.** You were issued a summons in late 2005 by IRS, were you
6 not?

7 **A.** I -- I have received a summons, yes.

8 **Q.** And you didn't show up to meet the IRS agent in response
9 to that summons, did you?

10 **A.** I don't know that particular instance. I thought I did
11 come to a summons, but I don't know what date or what -- when
12 I was responding to.

13 **Q.** Well, you showed up to one in 2009; isn't that right?

14 **A.** Okay.

15 I'll agree.

16 **Q.** Is that the first time you went to meet with someone at
17 IRS?

18 **A.** Yes.

19 **Q.** Your personal checking account at Mechanic's Bank was
20 leveed by the Franchise Tax Board in October 2005, was it not?

21 **A.** I remember a levy.

22 **Q.** Is that a "yes"?

23 **A.** I don't have the date. I don't carry all these dates
24 around.

25 **Q.** And your joint account with your wife was also levied on

1 the same date.

2 Do you recall that?

3 **A.** I know I think -- both of our accounts were levied.

4 **Q.** And they were both levied again in 2007. Do you recall
5 that?

6 **A.** Not precisely, but let's just say for argument's sake,
7 yes.

8 **Q.** You knew that IRS might levy your bank account as well,
9 didn't you?

10 **A.** Not necessarily. I don't know.

11 **Q.** You filed lawsuits in three different district courts to
12 keep IRS from getting information about your income, didn't
13 you, Mr. Grant?

14 **A.** Could you describe what those -- the term I think is
15 motion to quash. Is that what you're saying?

16 **Q.** Did you pay a filing feed in the District Court to file a
17 lawsuit against the government?

18 **A.** Motion to quash I think is -- is that -- lawsuit. I
19 don't -- I don't understand all those terms. Motion to quash,
20 is that the --

21 **Q.** Did you file something to get a judge to decide --

22 **A.** I believe so.

23 **Q.** -- regarding --

24 **A.** Yes.

25 **Q.** One such motion in this district?

1 **A.** Yes.

2 **Q.** Two in Los Angeles?

3 **A.** I would say in Los Angeles, something.

4 **Q.** One in Ohio?

5 **A.** Ohio, it seems -- I have a recollection of that.

6 **Q.** The Ohio one was for Macy's, was it not?

7 **A.** Macy's sounds familiar.

8 **Q.** Is that a "yes"?

9 **A.** Yeah.

10 **Q.** And you never once brought up your claimed views for a
11 court to decide them, did you, Mr. Grant?

12 **A.** I don't understand that.

13 **Q.** Is that a -- Please answer the question "yes" or "no."

14 **A.** No. I don't understand.

15 **Q.** Do you need me to rephrase the question?

16 **A.** Yes.

17 **Q.** You never once told any of these courts these views that
18 you're claiming you have about tax.

19 **A.** No.

20 **Q.** And you didn't do that because you knew they would be
21 rejected, didn't you?

22 **A.** I didn't put those motions together. I kind of skimmed
23 over them and relied on somebody else.

24 **Q.** You just outsourced those motions to Peymon Mottahedeh?

25 **A.** He was the person I relied on.

1 Q. Is that a "yes"?

2 A. Yes.

3 Q. You filed these motions to delay IRS from collecting the
4 taxes it thought you owed; isn't that right?

5 MR. COHAN: Object to the form of the question, what
6 the IRS thought. He wouldn't know what they thought.

7 THE COURT: Yeah. Correct.

8 BY MR. SAMPSON:

9 Q. You filed these motions to delay IRS's collection of taxes
10 that they were attempting to collect from you.

11 A. I don't know.

12 Q. You don't know why you filed these lawsuits?

13 A. I don't know what the objective was. It was to protect my
14 rights as far as I understood.

15 Q. I'm going to show you Exhibit 134.

16 (Exhibit published.)

17 MR. SAMPSON: Please zoom in on the top.

18 (Exhibit published.)

19 BY MR. SAMPSON:

20 Q. You put -- You -- Who prepared this document?

21 A. Can I see more of it?

22 MR. SAMPSON: Zoom out.

23 THE WITNESS: Sure wasn't me.

24 (Exhibit published.)

25 THE WITNESS: I would say -- the Freedom Law School.

1 **MR. SAMPSON:** All right. Now zoom in on the top.

2 **Q.** Is that your handwriting that says no phone, no email?

3 **A.** Looks like my writing. My printing, I mean.

4 **Q.** So you added that to what Freedom Law School prepared?

5 **A.** Apparently.

6 **Q.** And that's because you didn't want anybody actually
7 contacting about your tax liabilities; isn't that right?

8 **A.** I may have been told what to do. I don't know.

9 **Q.** It also says "pro se."

10 Do you know what "pro se" means?

11 **A.** Is that where I do it --

12 **Q.** I'm not answering the questions.

13 **A.** Okay. I don't fully recall the definition.

14 **Q.** Do you know that you were telling this court that you
15 didn't have a lawyer?

16 **A.** And I -- I guess I didn't based on what you said. Yes.

17 **Q.** Please show Exhibit 129.

18 (Exhibit published.)

19 **MR. SAMPSON:** Could you zoom in on the top portion.

20 (Exhibit published.)

21 **BY MR. SAMPSON:**

22 **Q.** Now, you stated -- testified that you did meet with IRS in
23 response to a summons; is that right?

24 **A.** I did.

25 **Q.** And you met with Patty Young-Lau?

1 **A.** I believe so.

2 **Q.** And was it 2009, sometime after this letter?

3 **A.** Makes sense, yes.

4 **Q.** So you received this letter.

5 **A.** Yes.

6 **Q.** There's an attachment on the fourth page called, why do
7 you have to pay taxes?

8 Do you see that?

9 **A.** It's pretty blurry from here. Well, I can read the
10 caption.

11 **Q.** You received that with the letter, did you not?

12 **A.** I believe so.

13 **Q.** And it says, what does IRS do to address willful
14 noncompliance with the U.S. tax laws, doesn't it?

15 **A.** (Reviewing document.)

16 Okay.

17 (Reviewing document.)

18 That's what it says.

19 **Q.** And section two says that it -- IRS could include
20 prosecution and prison sentences, doesn't it?

21 **A.** Throw the book at you.

22 **Q.** Is that a "yes"?

23 **A.** Yes, I read that.

24 **Q.** And you discussed this pamphlet with Mr. Mottahedeh, did
25 you not?

1 **A.** As I recall.

2 **Q.** Is that a "yes"?

3 **A.** Yes.

4 **Q.** That -- Go back one page, please.

5 (Exhibit published.)

6 **BY MR. SAMPSON:**

7 **Q.** You received this request for documents from the IRS to
8 bring with you to this meeting in 2009, didn't you?

9 **A.** I believe it was with it.

10 **Q.** And you didn't bring those documents to the meeting, did
11 you, Mr. Grant?

12 **A.** I just simply responded to that.

13 **Q.** That is a "yes" or a "no," Mr. Grant?

14 **A.** I did not.

15 **Q.** But you did come to the meeting with your own court
16 reporter, didn't you?

17 **A.** I did have a person with me.

18 **Q.** Transcribing it as a court reporter?

19 **A.** Tape-recorder.

20 **Q.** And in that meeting, you never once brought up your
21 claimed beliefs about the legality of taxes, did you,
22 Mr. Grant?

23 **A.** I did not. I didn't provide any --

24 **Q.** That's -- That's sufficient.

25 And, indeed, you never asked IRS if your views were

1 correct, did you?

2 **A.** No.

3 **Q.** And you never asked a court if your views were correct,
4 did you?

5 **A.** I am here.

6 **Q.** Before your prosecution?

7 **A.** No. No.

8 **Q.** Thank you.

9 You didn't show up for trial in Tax Court, did you,
10 Mr. Grant?

11 **A.** I did not go to a tax court.

12 **Q.** And you didn't ask these questions of IRS and the courts
13 because you didn't know -- you didn't want to know what the
14 answer was; isn't that correct?

15 **A.** No.

16 **THE COURT:** All right. Counsel, we've reached the
17 end of the day.

18 Ladies and gentlemen of the jury, it's Friday afternoon,
19 and I want to just advise you that we will conclude the trial
20 on Monday. Monday will be a full day. As I told you, the
21 first and last days of trial are full days. Full day means
22 8:30 to 4:00 or 5:00, if you'd like to stay as late as 5:00.

23 We anticipate finishing the evidence first thing in the
24 morning and proceeding to closing arguments and instructions.

25 We will provide lunch for you, so you -- because you will

1 be here all day.

2 And keep in mind the instructions that I've given you
3 every day. Do not talk to anyone or allow anyone to talk to
4 you about the case; and -- that includes talking among
5 yourselves.

6 Please do not do any independent research about the case,
7 and please do not use any electronic means to either do
8 research or to communicate about the case.

9 You're excused at this time till 8:30 on Monday morning.

10 Mr. Smith, if you would remain a moment.

11 (The following proceedings were heard out of the presence
12 of the jury:)

13 (Juror Smith was present in the courtroom.)

14 **THE COURT:** Mr. Smith, I just want to give you an
15 opportunity to leave a number with me if you would like me to
16 make that effort for you this afternoon.

17 **A JUROR:** I was unable to contact my wife. She's not
18 answering the phone.

19 **THE COURT:** Okay.

20 **A JUROR:** So --

21 **THE COURT:** Will you call in before the end of the
22 day if you can?

23 **A JUROR:** I will call in this afternoon when I get
24 home.

25 **THE COURT:** And you have Nichole's number?

1 **A JUROR:** I do not.

2 **THE CLERK:** Okay.

3 **THE COURT:** Okay. She'll give it to you. And I'll
4 do what I can this afternoon.

5 **A JUROR:** Okay.

6 **THE COURT:** All right. Thank you. Have a good
7 weekend.

8 (The following proceedings were heard out of the presence
9 of the jury:)

10 **THE COURT:** All right. Mr. Grant, you may step down.
11 All right, counsel. We're going to take a lunch break.

12 **MR. SAMPSON:** Yes.

13 Your Honor, could we remind the defendant not to discuss
14 his testimony with counsel?

15 **THE COURT:** Yes. Mr. Grant, now that you've started
16 testifying, you may not talk about your testimony with counsel
17 until the matter's concluded.

18 All right. So a lunch break, and then we'll come back and
19 talk about the jury instructions. All right. How much time
20 would you like? Forty-five minutes? Or an hour.

21 **MR. SAMPSON:** Whatever the court prefers?

22 **MR. COHAN:** We're just going to go -- if we get have
23 an hour --

24 **THE COURT:** Okay. An hour is fine. We'll see you
25 back here at 2:30.

1 **MR. SAMPSON:** Thank you.

2 **MR. COHAN:** Thank you, Your Honor.

3 **THE COURT:** Okay.

4 (Recess taken at 1:33 P.M.; proceedings resumed at 2:34
5 P.M.)

6 **THE CLERK:** Please remain seated and come to order.

7 (The following proceedings were heard out of the presence
8 of the jury:)

9 **THE COURT:** All right. So I will report that I was
10 able to talk to someone in Juror Smith's doctor's office who
11 promised me on Monday morning, she would make contact with the
12 allergist and expedite a new appointment for him, so I think
13 that should make him feel better.

14 Okay. All right. So we have a couple of things to do.
15 We need to go over the jury instructions. And we'll go
16 through them one at a time.

17 You all will -- You can remain seated. Will you please
18 put your microphone down and talk -- Are those on?

19 **THE CLERK:** They're not. I have to turn them on.

20 **THE COURT:** And talk directly into the microphones.

21 While we're working on that, I just want to enter my final
22 ruling on the Rule 29 motion. I did have the opportunity to
23 read the *Spies* case that Mr. Cohan relied upon.

24 And my determination is as follows: In the *Spies* case,
25 the trial court erred by not giving an appropriate lesser

1 included instruction and conflating the felony and the
2 misdemeanor charges.

3 And in our case, we are going to give the lesser included
4 instruction, and we're not going to conflate the felony and
5 misdemeanor charges.

6 And I thought that it was fairly instructive on the -- on
7 the description of the differences between the two types of
8 offenses. And Mr. Cohan is absolutely correct that the real
9 differentiating element is the affirmative action that is
10 required.

11 The instructions that you all have submitted do
12 incorporate that language. And I think that that fully takes
13 care of it.

14 But there is one thing that I wanted to explore when
15 looking at the jury instructions in combination with this need
16 for an affirmative act.

17 In the *Spies* decision, it's clear that the neglect of
18 statutory duty, the willful failure to pay or failure to file
19 are lesser inclusions. But it can be combined with some act --
20 some affirmative act to support an evasion charge.

21 And in the opinion, the court by way of illustration and
22 not by way of limitation, says we think affirmative willful
23 attempt may be inferred from conduct, and it gives a
24 non-exclusive list such as keeping a double set of books,
25 making false entries or alterations or false invoices or

1 documents, destruction of books or records, concealment of
2 assets, or covering up sources of income, handling one's
3 affairs to avoid making the records usual in transactions of
4 kind, and any conduct, the likely effect of which would be to
5 mislead or conceal.

6 So it -- there's certainly a laundry list, and it's a
7 non-exclusive list, and the court makes the point that the
8 inferences to draw from that conduct are for the injury to
9 draw, not for the court. So the motion to the extent it rests
10 on the *Spies* case, the motion is denied.

11 But this also raises another issue. And that has to do
12 with the injury instructions. And there is this non-exclusive
13 list, and it's not clear to me what the government is relying
14 upon as the affirmative conduct from which an inference of
15 evasion can be drawn.

16 The jury instructions say you're limiting it to the -- the
17 check-writing habits, use -- the use of money orders and the
18 digital money orders, the warehouse bank and that kind of
19 thing. We've heard other evidence, and it's not clear to me
20 what your intent is.

21 You've elicited testimony with regard to Mr. Grant not
22 identifying himself or not producing the list of records that
23 Ms. Young-Lau added. Are those kinds of things you're relying
24 upon, or is it just going to the banking habits of Mr. Grant?

25 **MR. KLUGE:** Your Honor, the only affirmative acts

1 listed in the indictment are what you just described, the --
2 the use of MyICIS through the money orders, the use of the
3 debit cards through MyICIS, the use of the cashier's checks to
4 pay personal expenses, and the use of the postal money orders
5 to pay personal expenses.

6 **THE COURT:** Okay. So those are the affirmative acts
7 that you're relying upon, and the other things go to the
8 question of willfulness or good faith.

9 **MR. KLUGE:** That's correct, Your Honor.

10 **THE COURT:** I just wanted to get clarity from you
11 all.

12 **MR. KLUGE:** If the indictment said those things and
13 others, then they think we would rely on those, but the
14 indictment did not, so within the jury instructions, our
15 reliance and our closing, we will argue those four things I
16 just described, that those are the alleged affirmative acts.

17 **THE COURT:** Okay. All right. Thank you for
18 clarifying that.

19 All right. Let's turn to the instructions.

20 **MR. COHAN:** May I be heard briefly.

21 **THE COURT:** Well, I heard you all the other day, and
22 I ruled tentatively, and I simply wanted to confirm my ruling.

23 This is not an opportunity for you to argue further.

24 **MR. COHAN:** I just wanted to point one thing out,
25 Your Honor.

1 **THE COURT:** What?

2 **MR. COHAN:** That is, that the affirmative acts that
3 are alleged here cannot as a matter of law apply to counts two
4 or three because they have nothing to do with the assessment.
5 And there has to be some logical nexus between these
6 affirmative acts and the charge.

7 **THE COURT:** Okay.

8 **MR. COHAN:** They could legitimately be considered
9 with respect to payment, but that's only charged in count one.
10 It's not charged in count two or count three.

11 And thank you for letting me make my record.

12 **THE COURT:** Well, I believe you said that the other
13 day, and I was mindful of that.

14 Nonetheless, I think that the question's a jury question,
15 and the jury has been very, very patient. They will get the
16 case on Monday and decide.

17 All right. Now we're going to turn to the jury
18 instructions. Want to go through each of them, though, to
19 make sure that we're all on same page, even the joint ones.

20 So we're -- I'll start first with the jointly filed
21 instructions, which are contained in document -- in Docket No.
22 77 filed on May the 11th.

23 Okay. The first, one duty to find the facts and follow
24 the law, that's model instruction 3.1. That will be given.

25 3.2, charge is not evidence.

1 3.3 or 3.4, the defendant's election to testify or not, I
2 assume that right not to testify is 3.3 and right -- and
3 defendant has testified is 3.4.

4 Do I have the numbers right?

5 **MR. KLUGE:** I believe so, Your Honor.

6 **THE COURT:** All right. So I'll give the 3.4. Both
7 instructions are currently included on the same page, so we
8 need to separate them out. And just give me the 3.4.

9 **MR. KLUGE:** Does Your Honor want that in a filed
10 pleading or just a blind courtesy copy delivered to chambers?

11 **THE COURT:** Well, we need blind copies of all the
12 instructions. And by "blind," it is to have no reference to
13 the submitting party and no reference to the authority. But I
14 would like you to put the titles back in it.

15 It's impossible for the jury -- this will go back in to
16 the jury. And it's -- there's no reason to make them have to
17 read every single one of them to find one that they might
18 particularly want to revisit in the jury room.

19 So you need to put the titles on them so that they can
20 find them.

21 **MR. COHAN:** You mean just instruction number?

22 **THE COURT:** Well, the title of the instruction. The
23 caption. You've removed the captions from --

24 **MR. COHAN:** Oh, oh. I'm just looking at what was
25 filed, and it's just stipulated proposed instruction No. 19.

1 **THE COURT:** No, it should say, "Duty of jury" --

2 **MR. COHAN:** Oh, okay.

3 **THE COURT:** -- at the top. It should say, "Ruling on
4 objections," "credibility of witnesses," the title that comes
5 from the model -- the manual.

6 **MR. COHAN:** What's stated in the table of
7 instructions?

8 **THE COURT:** Yes, exactly.

9 **MR. COHAN:** Thank you. Okay.

10 **THE COURT:** All right. 3.5, which is reasonable
11 doubt.

12 3.6, which is what is evidence?

13 3.7, what is not evidence.

14 3.8, direct and circumstantial evidence.

15 3.9, credibility of witnesses.

16 3.10 -- Do you still want that one, activities not
17 charged?

18 **MR. KLUGE:** Yes, Your Honor.

19 **THE COURT:** Mr. Cohan?

20 **MR. COHAN:** (Reviewing document.)

21 (Off-the-record discussion.)

22 **MR. COHAN:** Kind of a close call for me, Your Honor.
23 I'm not sure --

24 **THE COURT:** You stipulated to it previously for --
25 obviously, for some reason.

1 **MR. COHAN:** Well, it was because of our concern about
2 the 404(b) instruction that we ultimately -- well, the court
3 ruled, I believe, that it was not going to give such an
4 instruction.

5 **THE COURT:** Right.

6 **MR. COHAN:** And did not.

7 **THE COURT:** Do you want to withdraw this?

8 **MR. COHAN:** I think so, yes. I mean, just one less
9 instruction for the jury that they don't need, so --

10 **THE COURT:** No, I agree. I don't think it's
11 necessary. Why do you -- Do you all care? Usually, it's a
12 defendant's choice.

13 **MR. KLUGE:** The government doesn't -- will defer to
14 the court, Your Honor.

15 **THE COURT:** Okay. You want it withdrawn, Mr. Cohan?

16 **MR. COHAN:** I do, Your Honor.

17 **THE COURT:** All right. So we won't give that one.

18 3.11, multiple counts. I assume you still want that?

19 **MR. KLUGE:** Yes, Your Honor.

20 **THE COURT:** Mr. Cohan?

21 **MR. COHAN:** Yes, Your Honor.

22 **THE COURT:** 3.20, which is on or about defined. I
23 assume that you still want that?

24 **MR. KLUGE:** Yes, Your Honor.

25 **THE COURT:** Yes?

1 **MR. COHAN:** I don't have an objection to it, Your
2 Honor.

3 **THE COURT:** Okay. Well, you all stipulate -- I'm
4 only giving these because you all submitted them as a
5 stipulation, so unless I hear an objection, I'm going to give
6 whatever it is you all have stipulated to.

7 **MR. COHAN:** That's why I didn't object, Your Honor.

8 **THE COURT:** Okay.

9 4.1, statements by defendant. Okay. I'll give that.

10 Okay. We're not giving 4.3. Oh, with regard to 4.14,
11 opinion evidence, I don't generally put in the names of the
12 witnesses who offered opinion testimony. And that's one
13 thing.

14 And secondly, is the government going to call Dr. Chen?

15 **MR. KLUGE:** We haven't conferred yet, Your Honor, and
16 determined that, so I think the government would agree it
17 would be best to remove the names of the individuals.

18 **THE COURT:** Yeah. The model instruction doesn't even
19 include a bracket for that. I mean, the -- you've heard
20 testimony from witnesses who may -- who have given their
21 opinions because of whatever the reasons.

22 So --

23 **MR. COHAN:** So --

24 **THE COURT:** Whatever the language of the Ninth
25 Circuit manual 4.14 unmodified, is what I want.

1 **MR. KLUGE:** Yes, Your Honor.

2 **THE COURT:** Okay. So that's 4.14. Oh, let's see,
3 4.15. Oh, I did have questions about 4.15 and 4.16.

4 The first is summaries not received in evidence -- charts
5 and summaries not received in evidence. Did we have any of
6 those? I think the only ones -- charts and summaries we had
7 were received in evidence. I don't think I allowed you all to
8 show any that were not received in evidence, but I could be
9 wrong.

10 **MR. KLUGE:** That's my recollection as well, Your
11 Honor. I --

12 **MR. COHAN:** I think I objected to one of the summary
13 exhibits. And I believe Your Honor sustained that objection.

14 **THE COURT:** Right. I --

15 **MR. COHAN:** -- bank account balances, some chart.

16 **THE COURT:** But that's not evidence. So it
17 wouldn't -- and I didn't allow them to publish it.

18 **MR. COHAN:** Yeah, the other one was -- I think Your
19 Honor agreed that it was confusing because it had --

20 **THE COURT:** Right. Right. Right. Right.

21 The witness was able to read the amount of whatever it
22 was.

23 **MR. SAMPSON:** The amount of payments towards the 940.

24 **THE COURT:** That's what it was, the amount of
25 payment, but it did not come in as evidence.

1 **MR. KLUGE:** That's correct, Your Honor.

2 **THE COURT:** So my view is that summaries received in
3 evidence, 4.16 is the appropriate one. And I don't -- I'm not
4 sure that 4.15 is necessary.

5 **MR. KLUGE:** Would 4.15 apply to the brain image that
6 Dr. Woods testified, Your Honor? It wasn't a chart or
7 summary, but --

8 **THE COURT:** That was a demonstrative exhibit, and
9 they don't come, and we don't give instructions about them.

10 **MR. KLUGE:** Okay.

11 **THE COURT:** It wasn't a chart or summary.

12 **MR. KLUGE:** Then the government has no objection if
13 the court removes from the proposed instructions 4.15?

14 **THE COURT:** Mr. Cohan.

15 **MR. COHAN:** I'm fine with removing it, Your Honor.
16 The fewer instructions I think the easier it is for the jury
17 to wade through them.

18 **THE COURT:** Thank you. All right. So 4.16 will be
19 given.

20 All right. And then at the end of the -- we're going to
21 skip the case-specific instructions until we get through the
22 stipulated instructions.

23 So the next one on the stipulation list is 7.1, duty to
24 deliberate; 7.2, consideration of evidence; 7.3, use of notes;
25 7.4, punishment, 7.5, verdict form; 7.6, communication with

1 the court.

2 I always give the limiting instructions that were given
3 throughout the trial again so I would give both of them.
4 There are two of them, one having to do with the reliance
5 materials, and one having to do with statements made to the
6 defendant and their limited purpose. I would give those again
7 as well.

8 **MR. COHAN:** I don't know that I have a printed copy
9 of them.

10 **THE COURT:** No, you don't, because I wrote them out.
11 You all submitted --

12 **MR. COHAN:** Understood.

13 **THE COURT:** -- stipulation as to the effect on
14 listener one but not to the other one. And I just pulled that
15 from the *Powell* case, so I will simply -- I've got them
16 written down, so I'll include those.

17 **MR. COHAN:** Your Honor advised us think it was
18 yesterday but it might have been earlier that you were going
19 to modify the effect on hearer instruction to broaden it, and
20 it had initially been communications from IRS people to
21 Mr. Grant.

22 **THE COURT:** Right.

23 **MR. COHAN:** And you just removed that limitation.

24 **THE COURT:** I did. And I used it with your
25 witness --

1 **MR. COHAN:** Yes.

2 **THE COURT:** -- by inserting his name. You're going
3 to hear testimony from him that this -- and then -- and -- and
4 then I used it again with regard to something else. But in
5 any event --

6 **MR. COHAN:** The stuff on the video, I think.

7 **THE COURT:** On the videos, programs, yeah. The
8 reliance materials.

9 **MR. COHAN:** Okay.

10 **THE COURT:** That's a little bit different.

11 But in any event, I'll just use the generic one. There's
12 a generic limiting instruction in the manual, and only one of
13 them is modified by the *Powell* decision. I forgot which one
14 that is.

15 Let's see. I think I wrote that down.

16 **MR. COHAN:** Well, there are two *Powell* decisions,
17 1955 F.2d. and 1936 F.2d. --

18 **THE COURT:** Here. Here they are. I'll just tell you
19 what the instructions will be.

20 **MR. KLUGE:** Does Your Honor want us to include them
21 in the blind copy --

22 **THE COURT:** Well, I'm going to read this to you now
23 so yes, you can include it.

24 **MR. KLUGE:** Okay.

25 **THE COURT:** Oh, it was the reliance materials that I

1 took from the *Powell* decision. And this is the instruction I
2 gave: I instruct you that legal material admitted at trial is
3 relevant only to show the defendant's state of mind and does
4 not establish what the law is. The court will instruct you as
5 to the law that applies to this case.

6 **MR. KLUGE:** Your Honor, is it possible to get a hard
7 copy of that so that -- my ability to transcribe is not
8 that --

9 **THE COURT:** Yeah, I'll give you a copy of this.

10 **MR. KLUGE:** Thank you, Your Honor.

11 **THE COURT:** And then the other one was your
12 stipulated instruction, No. 128. And it was, you are about to
13 hear evidence that employees of the Internal Revenue Service
14 made statements to the defendant. I instruct you that this
15 evidence is admitted only for the limited purpose of
16 demonstrating the defendant's state of mind, knowledge, or the
17 effect the statement had on the defendant. Therefore, you
18 must consider it only for that limited purpose and not for
19 another.

20 Those two should be written to simply change the tense. I
21 mean, "you have heard" as opposed to "you are about the hear."
22 All right?

23 Hera, can you make a copy of this to give to counsel?

24 **MR. KLUGE:** Thank you, Your Honor.

25 **THE COURT:** Okay. All right. So that is the general

1 instructions.

2 Now we turn to the case-specific instructions. about which
3 there are some disputes.

4 (Off-the-record discussion.)

5 **THE COURT:** All right. Now, let's start with -- All
6 right. Let's start with No. -- what you numbered as 937. It
7 is modified by you all and found as an amended stipulated
8 proposed instruction No. 39. And that's at Docket 120. And
9 this is on tax evasion, the elements.

10 The revised proposed instruction is fine. I'll give that.

11 **MR. COHAN:** Your Honor, I just want to make sure
12 that --

13 **THE COURT:** It's Docket No. 120, which supersedes
14 your first-filed one, which is docket No. 77.

15 **MR. COHAN:** Thank you. I was just informed of that
16 in my left ear.

17 **THE COURT:** Okay.

18 **MR. COHAN:** Sorry to disturb you.

19 **THE COURT:** That's all right. So that was the latest
20 stipulation that you all submitted on June 2nd. That
21 instruction is appropriate. And I'll give that.

22 **MR. KLUGE:** Yep.

23 **THE COURT:** Okay?

24 **MR. KLUGE:** Yes, Your Honor?

25 **THE COURT:** Okay. All right.

1 And then the other one that you stipulated to was No. 43,
2 and that is a modification of Ninth Circuit model instruction
3 9.38 on the lesser-included offense of willful failure to pay
4 tax. And that one's fine. It's Docket No. 77 filed on May
5 the 11th. Okay?

6 **MR. KLUGE:** Yes, Your Honor.

7 **MR. COHAN:** Yes, Your Honor.

8 **THE COURT:** All right. Now we get to the ones that
9 are in dispute. We have tax evasion and tax deficiency. Tax
10 evasion, affirmative act, and "willfully" defined. Those were
11 three.

12 And then with regard to the defendant's separate ones,
13 defendant has proposed a number that I ruled on at the
14 pretrial conference. I've already ruled on them at the
15 pretrial conference and denied them but you obviously have an
16 opportunity to reargue the jury instructions, the
17 case-specific jury instructions now that we've heard all of
18 the evidence.

19 All right? So let's start first -- The government's only
20 got three, so theirs are easier. Actually, there's four with
21 the latest one. And the defendant, I think, had seven and
22 then submitted another one yesterday.

23 So let's start first with the shorter list, which are the
24 government's. The government's proposed No. 40, looking at
25 Docket No. 78, and No. 40 is tax deficiency.

1 **MR. KLUGE:** That's correct, Your Honor.

2 **THE COURT:** All right. Do you all wish to be heard
3 on these?

4 **MR. KLUGE:** Your Honor, I think it's quite clear tax
5 deficiency is one of the elements of the offense. And so I
6 think it's appropriate to instruct the jury on tax deficiency.

7 And because in this case, at least with respect to count
8 one, there was no -- Mr. Grant did not file a tax return, and
9 the IRS had not reached an assessment. But the law is that
10 tax deficiency arises as an operation of law if at the time
11 that the tax return is due and the government can prove a tax
12 deficiency.

13 So I think it's appropriate to -- for the judge to
14 instruct the jury on this particular instruction No. 40 from
15 the government.

16 **THE COURT:** Well, the way that it's written, it says,
17 "the first element that the government must prove."

18 Is that the first element of tax evasion?

19 **MR. KLUGE:** Yes, Your Honor.

20 **THE COURT:** Is the first element that there must be a
21 tax deficiency? Or a tax owing?

22 **MR. KLUGE:** It is a tax due and owing.

23 **THE COURT:** Okay. That is the first element. Okay.
24 All right. Mr. Cohan?

25 **MR. COHAN:** Yes, Your Honor. I think that this

1 proposed instruction could be redacted and be fine if on that
2 third paragraph, the words "a tax due and owing" and you stop
3 right there and eliminate the next three lines until you get
4 past the word "the deficiency," so then it would read "a tax
5 due and owing arises by operation of law on the date the
6 return was due." And that's all that needs to be said on that
7 subject.

8 The fact that there are other ways of proving it is
9 irrelevant and confusing.

10 **THE COURT:** Response?

11 **MR. KLUGE:** I don't think it's confusing, Your Honor.
12 I think it's more accurate, but --

13 (Off-the-record discussion.)

14 **MR. KLUGE:** I think it would be -- I would agree with
15 Mr. Cohan. It would be fine to remove those two other options
16 since the third option is the option that's at issue in this
17 case.

18 **THE COURT:** Okay. So it shall be redacted, and it
19 shall read "a tax due and owing" -- I'm sorry. What did you
20 say, Counsel?

21 **MR. COHAN:** "Arise by operation of law on the date
22 the return was due."

23 **THE COURT:** A tax and due and owing arises by
24 operation of law. Okay. So we'll mark out everything up to
25 there.

1 All right. That's approved.

2 And you all need to provide me with blind copy of that one
3 as well.

4 The next one is No. 41, and that is tax evasion
5 affirmative act, and I note that the defendant -- defense has
6 submitted the same instruction with a different modification.

7 This is a Third Circuit model instruction. And as best as
8 I can tell the modification appears underneath the box, first
9 sentence. Each of you has proposed a different sentence.

10 Okay? Do you want to be heard?

11 **MR. KLUGE:** I don't think anything's changed during
12 the course of the trial, Your Honor, that would indicate that
13 any further need other than -- any further need to change what
14 the court has already approved previously, which is what the
15 government proposed in Document No. 78 --

16 **THE COURT:** Response?

17 **MR. KLUGE:** -- instruction No. 41.

18 **THE COURT:** Response?

19 **MR. COHAN:** Yes, Your Honor.

20 We provided language that I think more accurately reflects
21 not only in the law but what the evidence is in this case.
22 And the modifications are in what we proposed and filed as
23 Document No. 80, page 11 of 13.

24 Does the court have that?

25 **THE COURT:** Your instruction?

1 **MR. COHAN:** Yes.

2 **THE COURT:** Yeah, that's what I'm looking at.

3 **MR. COHAN:** Right.

4 **THE COURT:** There's one sentence that's different in
5 each of your two.

6 **MR. COHAN:** Right. It's right below that box.

7 **THE COURT:** Yeah, that's what I just said. The
8 government says, "even otherwise lawful or innocent conduct
9 may constitute an affirmative act if you find that defendant
10 Richard Thomas Grant acted with intent to conceal income or
11 mislead the government."

12 The defendant says, "otherwise lawful or innocent conduct
13 does not constitute an affirmative act unless you find that
14 the defendant Richard Grant acted with intent to violate the
15 law as he understood it."

16 My question is which one comports with what the actual
17 language of the Third Circuit model instruction says?

18 **MR. KLUGE:** Your Honor, I believe the government's
19 proposed instruction comports more with the Third Circuit's
20 model --

21 **THE COURT:** Does it have that "even" in it?

22 **MR. KLUGE:** I believe it does.

23 **THE COURT:** Let's see if I can find that.

24 (Pause in the proceedings.)

25 **THE COURT:** The -- I have a copy from the Third

1 Circuit's. Yes, it has "even otherwise lawful or innocent
2 conduct." Okay. All right. Anything else?

3 **MR. KLUGE:** Not from the government, Your Honor.

4 **THE COURT:** All right. I'm going to give the
5 unmodified Third Circuit version.

6 **MR. COHAN:** My objection is that it's argumentative
7 and slanted toward suggesting to the jury that they should
8 look around for something and really is inconsistent with the
9 burden of proof the government has and defendant's presumption
10 of innocence, Your Honor.

11 And I think the modifications are a more accurate and
12 precise statement of what the law really is. I think that's
13 what the Third Circuit should have said. But I'm just a
14 lawyer.

15 **THE COURT:** Right.

16 **MR. KLUGE:** Your Honor, I would just note that in our
17 citation for that particular instruction, we did note it was
18 modified, but that was to indicate that we had inserted the
19 facts, the affirmative acts that were alleged in the
20 indictment.

21 **THE COURT:** No, I understand that. I understand
22 that. And both of you have the same affirmative facts
23 alleged.

24 As I said, I'll give the unmodified Third Circuit version
25 and that's reflected in Docket 78.

1 **MR. KLUGE:** Thank you, Your Honor.

2 **THE COURT:** Okay. And then the last one was No. 42,
3 willfully defined. Is this is an unmodified Ninth Circuit
4 model instruction?

5 **MR. KLUGE:** Yes, it is, Your Honor.

6 **THE COURT:** All right. Do you wish to be heard any
7 further on it?

8 **MR. KLUGE:** No, Your Honor.

9 **THE COURT:** Mr. Cohan?

10 **MR. COHAN:** Let's see. Is it court looking at the
11 Ninth Circuit's 9.42?

12 **THE COURT:** Yes, Document No. 78, page 6.

13 **MR. COHAN:** We proposed instructions No. 3 and 4
14 because it's important the jury be instructed that the
15 defendant is presumed not to know the law. And that's
16 particularly pertinent here because of the general assumption
17 that everybody knows there's a law that requires you to file
18 an income tax return, and that is totally inappropriate in
19 this case because this jury has to be made to understand very
20 clearly that this so-called common knowledge is not imputed to
21 this defendant.

22 **THE COURT:** Okay. All right. Anything else?

23 **MR. KLUGE:** Not from the government, Your Honor.

24 **THE COURT:** All right. Since I sit in the Ninth
25 Circuit, I follow the rules of the Ninth Circuit. Ninth

1 Circuit unmodified 9.42 will be given for willfully in lieu of
2 defendant's 3 and 4.

3 All right. That's it for the government. Let's turn to
4 the defendant's.

5 **MR. KLUGE:** Your Honor, there was one other one from
6 the government that we recently filed.

7 **THE COURT:** Oh, the repeat one, yes. Let's see if I
8 can find that.

9 **MR. COHAN:** This is Document 136?

10 **MR. KLUGE:** Yes.

11 **THE COURT:** Okay. I have that.

12 All right. This is not one that we've had any argument
13 on, so do you wish --

14 **MR. KLUGE:** That's correct, Your Honor.

15 **THE COURT:** To explain.

16 **MR. KLUGE:** Yes, Your Honor. I think it's important
17 given the voluminous material -- incorrect legal material
18 that's been presented at this particular trial to instruct the
19 jury on the law requiring the filing and paying of taxes and
20 on the definition of "voluntary" as it relates to the filing
21 and paying of taxes.

22 And I think case law supports it, and the government has
23 cited to the various provisions of Title 26 that set out those
24 requirements.

25 And the court has instructed the jury throughout the trial

1 that it is the source of the law and that it will provide the
2 law to the jurors. And I think absent this instruction, the
3 jurors may be confused based on the evidence that's been
4 presented at trial.

5 **THE COURT:** Okay. I agree in principle. But this
6 instruction is unwieldy and -- and unworkable. There's a -- I
7 mean, clearly the jury has to be instructed on what the legal
8 duty is, not because of all of the reliance materials but
9 because Mr. Cohan asked his expert to opine on whether or not
10 the defendant's mental state affected his ability to
11 understand his legal duty.

12 At some point, the jury has to be told what the legal duty
13 is irrespective of what the reliance materials show. So there
14 clearly has to be a statement of the law.

15 I do not like giving jury instructions based upon snippets
16 from case law. I told you all that previously. This
17 instruction seems to me to be a mish-mash of case law,
18 statutory law, regulatory law.

19 So I want a clean statement of what the statute -- United
20 States Code requires. That's what I want. I don't want bits
21 and pieces from a case.

22 The second paragraph seems perfectly fine, but I don't
23 know that that's really an issue.

24 **MR. KLUGE:** Well, the second paragraph, Your Honor,
25 lays out what the -- the amounts are that one needs to earn in

1 order to have a filing requirement.

2 **THE COURT:** Okay. And --

3 **MR. KLUGE:** And it -- it's important to -- the filing
4 requirement arises based on an amount of gross income that
5 individuals receive.

6 **THE COURT:** Okay. Doesn't 26 U.S.C. Section 6012 say
7 that every individual having for the taxable year gross income
8 which -- I'm sorry.

9 It says returns with respect to income taxes under
10 subtitle A shall be made by every individual having for the
11 taxable year gross income which equals or exceeds the
12 exemption amount.

13 Is that not a statement of law as to who's required to
14 file a return?

15 **MR. KLUGE:** Yes, Your Honor.

16 I think what this paragraph does is -- is inform the jury
17 as well as to what those exemption amounts are so that there's
18 not a dispute as to -- you know, the jury may not know what
19 the exemption amount was in a certain year, and it changes
20 from year to year.

21 **THE COURT:** Okay.

22 **MR. KLUGE:** And it changes based upon the marital
23 status, so that's why --

24 **THE COURT:** I think you all actually need to meet and
25 confer and talk just a little bit between yourselves. I am in

1 agreement in principle that the jury must be told what the
2 legal duty at issue here is in addition to the elements of
3 offense. And it should be told in a straightforward and
4 simple fashion.

5 This, I think, is just all over the place. There's just
6 too much -- there are too many components to this.

7 **MR. COHAN:** The first two paragraphs are fine. The
8 rest of it is totally inappropriate and unnecessary because
9 there aren't any extensions. And the fourth paragraph is just
10 catachresis.

11 **THE COURT:** Is just what?

12 **MR. COHAN:** Catachrises.

13 **THE COURT:** What does that mean?

14 **MR. COHAN:** Semantic pollution, misuse of English
15 language, gobbledy-gook.

16 **THE COURT:** I get the drift now.

17 **MR. COHAN:** Thank you.

18 **THE COURT:** Okay. I tend to agree that I don't see
19 the relevance of paragraph 3, and paragraphs (sic) 4 -- this
20 is the problem I have with the whole voluntariness issue. In
21 the case that you all rely upon, voluntariness was a defense
22 presented by the defendant. In this case, it is not.

23 The defendant -- The defense in this case is not that
24 income taxes are voluntary and he didn't pay. The defense is
25 that he was led to believe that he didn't have to pay and in

1 good faith relied upon the people who told him he didn't have
2 to pay.

3 **MR. KLUGE:** But I think, Your Honor, part of that
4 argument as to why he didn't pay was because he was told these
5 are voluntary and you don't have to.

6 **THE COURT:** Right.

7 **MR. KLUGE:** And there's been material that's been
8 presented through the video and other material that gives the
9 impression to the jury that the law may be that the taxes --
10 that filing taxes is a voluntary act.

11 **THE COURT:** Well, it's -- could certainly for anyone
12 who wishes to believe that give that impression, but that's
13 not what the defense is arguing.

14 Am I incorrect about that?

15 **MR. COHAN:** Not at all, Your Honor.

16 **THE COURT:** Right. It seems so to me that a -- an
17 affirmative state of what the law requires is inherently a
18 better instruction than a statement as to what the law does
19 not require, what the law is not.

20 **MR. KLUGE:** Well, Your Honor, I think the third
21 paragraph explains simply that "voluntary" means, that you are
22 required and are responsible for paying taxes. And I feel
23 that -- I just feel that there's some sort of -- there'll be
24 some sort of confusion with the jury given that they've seen
25 some of the reliance material that Mr. Grant claims to have

1 relied on that says the reason why I did not file taxes is
2 because these individuals told me it was voluntary.

3 And I think if we don't instruct the jury that, in fact,
4 the filing and paying of taxes is not a voluntary choice.

5 **THE COURT:** You don't think telling them that one who
6 earns a certain income threshold is required file a tax return
7 is inherently -- essentially the same thing but a more
8 positive statement?

9 **MR. KLUGE:** I think it is part of the -- I think it
10 is part of the law. And yes, I think saying that it's
11 required to be done helps indicate that it's voluntary, but
12 I -- still there's confusion or risk of confusion given the
13 fact that the word "voluntary" and that Mr. Grant relied
14 supposedly on material that says the filing of taxes is
15 voluntary.

16 **THE COURT:** Well, clearly the Ninth Circuit has said
17 that taxes are not voluntary.

18 I mean, I understand that that's -- that's the state. I'm
19 just not sure that it's necessary in a case in which we tell
20 them what the legal duty is.

21 Mr. Cohan?

22 **MR. COHAN:** "Voluntary" does not mean whatever the
23 government says it means. It's an English word. It has
24 meaning. And that meaning is directly contradictory to the
25 law but the government --

1 **THE COURT:** Is that what you're arguing, is that
2 he -- that paying taxes is -- is --

3 **MR. COHAN:** Of course not.

4 **THE COURT:** -- totally voluntary?

5 **MR. COHAN:** No. I just heard counsel say voluntary
6 means blah, blah, blah, that they're required to file.

7 That gobbledy-gook is gobbledy-gook. "Voluntary" does not
8 mean anything other than voluntary. So the government's
9 having used "voluntary compliance" in some of its materials
10 and other things is, as I said, semantic pollution. They
11 don't get to redefine the English words.

12 **THE COURT:** You know what I think I'll do. I think
13 I'll wait and hear what your closing arguments are. I
14 instruct after closing arguments. And if the defense argues
15 that payment of taxes is voluntary, then I will instruct that
16 the Ninth Circuit has found that payment of taxes is not
17 voluntary.

18 If indeed there is no such argument, then I'm not going to
19 give it.

20 **MR. COHAN:** There will be no such argument from me,
21 Your Honor.

22 **THE COURT:** Okay.

23 **MR. COHAN:** And I object to the government attempting
24 to argue that voluntariness means anything other than what it
25 means. There are three statutes that have to be read together

1 in order to actually define the filing requirement and --

2 **THE COURT:** You've prevailed, Mr. Cohan. I --

3 **MR. COHAN:** Oh, that means I'm supposed to stop.

4 Thank you.

5 **THE COURT:** Not giving it. Okay.

6 **MR. KLUGE:** Your Honor, then can we address the third
7 paragraph that has to do with the requirement to pay because I
8 think this is a another aspect of the law with respect to
9 taxes that it is important to instruct the jury.

10 The second paragraph relates to what the filing
11 requirement is. But there is also a requirement to pay.

12 **THE COURT:** Yes.

13 **MR. KLUGE:** And I think the third paragraph is clear
14 enough that explains what that requirement is.

15 **THE COURT:** What I want -- I mean, we don't need the
16 extension information. Persons who are required to file a
17 federal income tax return for particular year because they
18 received gross income above the minimum filing requirement are
19 required to do so on or before April 15th of the following
20 year.

21 Payment of any individual income tax -- see, I just don't
22 think this says it very clearly. I mean, you want to say
23 there's a duty to pay. There's a duty to file a return.

24 What's the statutory language for those two things? And
25 the income threshold. I want an instruction that says that.

1 **MR. KLUGE:** Very well, Your Honor.

2 **THE COURT:** Based upon statutory language. That's
3 what I want.

4 The voluntariness will not be given absent an argument
5 from the defense that that's what they're claiming.

6 And the first two paragraphs are fine.

7 (Off-the-record discussion.)

8 **THE COURT:** All right. They're still -- They're
9 going to be able to accommodate -- They already given -- got him
10 an appointment. I asked for them to try to get something even
11 earlier than what they found for him. They will, and they
12 will waive the cancellation, so no problem.

13 Okay. Now, going back to the duty, the legal duty
14 instruction, have I made myself clear as to what I think it
15 should be limited to?

16 **MR. KLUGE:** If I can reiterate, Your Honor, to make
17 sure that I'm clear, the first and second paragraphs we're
18 okay with.

19 The third paragraph you want a clearer statement of the --
20 of the filing requirement and the paying requirement.

21 **THE COURT:** Yes.

22 **MR. KLUGE:** And the fourth paragraph we'll eliminate
23 from the blind instruction we submit to the court, assuming
24 that an argument's not going to be made at closing about the
25 voluntariness of the tax code -- tax code.

1 **THE COURT:** Yes.

2 **MR. KLUGE:** And then we'll leave it at that.

3 **THE COURT:** Yes.

4 **MR. KLUGE:** Very well.

5 **THE COURT:** All right. Mr. Cohan, do you understand?

6 **MR. COHAN:** Mostly. I mean, I'd like to see in it
7 front of me.

8 **THE COURT:** Yeah, they will prepare it over the
9 weekend and make sure that counsel gets a copy.

10 **MR. COHAN:** We'll -- we'll work it out or at least
11 we'll agree that they're disagreeing about it if they put
12 "voluntary" in it. I just don't want to see that word in here
13 in connection with anything.

14 **THE COURT:** I just ordered them not to. I will give
15 the instruction if indeed the argument suggests that I should.
16 Okay?

17 All right. Let's move -- Okay. So we finished
18 government. Let's turn to the defense.

19 And let's start first with the original ones which I'd
20 already ruled upon but you can obviously state your objection
21 for the record. There were nine of them originally. I ruled
22 previously that No. 1 was covered by 9.42, the willfulness
23 instruction.

24 **MR. COHAN:** Well --

25 **THE COURT:** And today, I've just ruled on 3 and 4.

1 So if there's anything in addition you wish to say about the
2 others besides 3 and 4, now's the time.

3 **MR. COHAN:** Okay. Well, you ruled on No. 1 so I
4 guess you don't want to hear any more about that because you
5 believe that it's subsumed under 9.42.

6 I respectfully disagree because I think the jury needs to
7 be instructed that the defendant is not presumed to know the
8 law. And I believe if the jury isn't told that, they're
9 likely to assume that, like everybody else, he must know.

10 That's not covered by 9.42, Your Honor.

11 **THE COURT:** Okay. Any response?

12 **MR. KLUGE:** Nothing further from the government, Your
13 Honor.

14 **THE COURT:** All right. Moving on to No. 2.

15 **MR. COHAN:** This is elaboration and really based on
16 *Cheek*, and it's not inconsistent with 9.42, but I think it
17 explains more about what the government has to prove, and it's
18 important that the jury be instructed that they have to find
19 that the defendant who was presumed not to know what the law
20 was learned what the law was.

21 And the mere fact that he abandoned his prior assumption
22 is not a sufficient basis to infer that he knew. There's no
23 evidence that he knew other than that he, like most folks,
24 assumed there was a law.

25 **THE COURT:** Is knowingly a element of this offense?

1 **MR. KLUGE:** No, it is not, Your Honor.

2 **THE COURT:** Okay. That's what I have, that it's not
3 the mens rea that's required for this offense.

4 **MR. KLUGE:** That's correct. Willfulness is the mens
5 rea of this offense, and so the government's position -- in
6 our -- we filed an opposition to the defendant's proposed
7 instructions, opposed this instruction for that very reason.
8 Instructing the jury on two different mental states would
9 confuse the issue. And the appropriate mental state that the
10 government's evidence must show is willfully, not knowingly.

11 **THE COURT:** Okay. All right.

12 No, that one won't be given.

13 I've ruled on 3 and 4.

14 Looking at No. 5, impeachment by a witness -- witness --
15 by earlier contradictory statement. What was the evidence of
16 that?

17 **MR. COHAN:** Your Honor precluded me from actually
18 developing the evidence that Randall Grant admitted to the
19 agents that he took Prozac for ten years.

20 He also in the same paragraph of his memorandum of
21 interview said that his -- even though he had said that his
22 brother was -- flew into a rage, thought the world was
23 disintegrating, thinks he's special -- I think there were nine
24 different statements, each of which singly -- and all of them
25 collectively a fortiori indicated that there were definitely

1 mental health issues in their family.

2 But he said, no, we don't have any mental health issues in
3 our family. Nobody's been institutionalized, even though they
4 took Prozac for ten years. The court also didn't let me
5 develop --

6 **THE COURT:** Well, the fact that he took Prozac is not
7 inconsistent with no one being institutionalized.

8 **MR. COHAN:** No, no. But it is inconsistent with
9 contending that they've never had any mental health issues in
10 their family. If you don't have mental health issues, you're
11 not allowed to take Prozac. It's a scheduled drug that can
12 only be prescribed by an M.D. who determines that there is a
13 mental illness.

14 **THE COURT:** Well, I know that that's not true. But
15 in any event --

16 **MR. COHAN:** What's not true?

17 **THE COURT:** I know that it's not true that only
18 people with mental illness take Prozac.

19 **MR. COHAN:** Well, they're not supposed to be taking
20 it if they don't have a mental illness, Your Honor.

21 **THE COURT:** Well, in any event -- in any event, we
22 have the witness's testimony. Tell me what in the record now
23 supports the giving of this testimony -- of this instruction.

24 (Pause in the proceedings.)

25 **MR. COHAN:** Just scrolling through my mind and trying

1 to recall what the witness -- just which witnesses have
2 testified. Just need another moment, Your Honor.

3 (Pause in the proceedings.)

4 **MR. COHAN:** Oh, Agent Fong and her testimony that her
5 recollection was refreshed. When Mr. Mottahedeh was on the
6 witness stand and he looked at the documents in front of him,
7 he was not allowed to use them really to assist him in
8 testifying, whereas Agent Fong was allowed to use them
9 repeatedly while saying simultaneously that her --
10 recollection was refreshed. And finally the court even noted
11 that she clearly not had her recollection refreshed. She was
12 simply reading from the documents.

13 And it had some -- something she characterized as global
14 amnesia for four hours, but she clearly didn't recall any of
15 it.

16 **THE COURT:** Okay.

17 So why is this instruction necessary in light of the 3.9
18 instruction that I've already given in the case and will give
19 again?

20 **MR. COHAN:** I don't have 3.9 in front of me.

21 **THE COURT:** That's the credibility instruction
22 promulgated by the Ninth Circuit.

23 **MR. COHAN:** Well, I've given you my best shot, Your
24 Honor, so --

25 **THE COURT:** Okay. I think that the list in 3.9 is

1 sufficient to cover --

2 **MR. COHAN:** Very well.

3 **THE COURT:** -- to cover this.

4 No. 6, IRS agents not deserving of more weight.

5 **MR. COHAN:** Yes.

6 **THE COURT:** And that's based upon a case, and the
7 case that you cite is a District Court case? You don't cite a
8 circuit case. You don't cite a model instruction. I should
9 give this because another judge in New York decided to give
10 this instruction?

11 **MR. COHAN:** The jury question -- The responses to the
12 jury questionnaires showed a remarkable predisposition to
13 believe the testimony of law enforcement officers above and
14 beyond ordinary folk.

15 The one juror who testified otherwise was first challenged
16 by the government for cause and then removed peremptorily.
17 His name was Koplow. And I think unfortunately, there is the
18 totally understandable desire to trust law enforcement people
19 more for the simple reason that if we can't trust law
20 enforcement people more than other people, we need to be very
21 concerned about the quality of our law enforcement because
22 they are given a public trust, and they have a great deal of
23 power, and they should be more credible than other people.
24 But they aren't.

25 And I think that needs to be noted here. It's a fact of

1 life that people don't want to realize because it's unnerving.

2 **THE COURT:** Okay. Response?

3 **MR. KLUGE:** Your Honor, it's not -- it's not a
4 pattern instruction from the Ninth Circuit. And I think the
5 Ninth Circuit pattern instruction regarding witness
6 credibility is more than sufficient and fair to both parties.

7 **THE COURT:** Yes. And if it were based on even some
8 Ninth Circuit law, I would have a difficult time seeing how
9 the credibility instruction that is typically given in these
10 cases wouldn't apply here.

11 You can certainly make whatever argument you wish about
12 the lack of credibility of these witnesses. But an
13 instruction based upon instruction that another district court
14 gave in New York is not persuasive authority in my view, so no
15 I will not give that.

16 No. 7, let's see, which is I instruct you that it is legal
17 to use a warehouse bank, prepaid debit cards, cashier's
18 checks, and mostly money orders to make payments of any kind.
19 Citizens have a right to financial privacy.

20 This is argument. I'm not going to give this.

21 **MR. COHAN:** It's law, Your Honor.

22 **THE COURT:** There's no -- There's no law that
23 requires the court to instruct that these acts were legal. No
24 one has even asserted that they were illegal.

25 I mean, the government's position is not that these acts

1 were illegal. It's just that these acts are sufficient to
2 give rise of an inference of his intent, period.

3 There's no reason for an instruction to this effect. No
4 one's argued otherwise. No, I won't give that.

5 No. 8, also based upon a case. This is at least a Ninth
6 Circuit case. It is not unlawful to intentionally make the
7 IRS's job more difficult. And that's dicta in a Ninth Circuit
8 case.

9 **MR. COHAN:** Dicta?

10 **THE COURT:** I don't understand why it is that a jury
11 instruction should be given to this effect.

12 **MR. COHAN:** Because it's far too easy for the jury,
13 all of whom are more or less intimidated by the IRS and by our
14 government, to think that if you make the government's job
15 more difficult, you must be doing something illegal and it's
16 simply not true.

17 **THE COURT:** It's really sort of a gross
18 generalization, isn't it, that the jury, all of which are
19 intimidated by the IRS and/or the government --

20 **MR. COHAN:** You're right. I'm sure some of them
21 aren't nearly as intimidated as others.

22 **THE COURT:** Yeah. Are you intimidated by the
23 government?

24 I mean, that's just a gross generalization, and there's no
25 reason to give a jury instruction because of that kind of

1 gross generalization.

2 **MR. COHAN:** Well --

3 **THE COURT:** I agree that it's not unlawful to
4 intentionally make the IRS's job more difficult. But why is
5 that -- why does that rise to the level of a jury instruction
6 as opposed to mere argument?

7 I mean, you've -- you argued that in our opening
8 statement. But you want me to sort of adopt that argument by
9 instructing the jury that that's what the law is?

10 **MR. COHAN:** Yes, because that is what the law is.

11 **THE COURT:** Hmm.

12 Okay.

13 **MR. KLUGE:** Your Honor, if I may be --

14 **THE COURT:** Any response?

15 **MR. KLUGE:** Just briefly, the *Caldwell* case that
16 Mr. Cohan cites to is not a case involving a Title 26 offense
17 in which the government needs to prove willfulness, and so the
18 case law from --

19 **THE COURT:** What is it? What is the case about?

20 **MR. KLUGE:** I believe it's a 371 -- 18 U.S.C. 371
21 conspiracy. And so it was a case that required a knowledge
22 element, not a willfulness element.

23 **MR. COHAN:** That's a false statement, Your Honor.
24 That is a absolutely false statement of the law. The charge
25 was 18 U.S.C. 371, conspiracy to impair, impede, obstruct, and

1 defeat a lawful function of the Internal Revenue Service. And
2 the law on 18 U.S.C. 371 is also found in the *Dahlstrom* case,
3 713 F.2d. page 1427, 1983 case.

4 And it says that to commit the substantive offense
5 requires the same mental state as the -- excuse me -- the --
6 the substantive offense and the conspiracy both require proof
7 of willfulness. That's what the *Caldwell* case stands for, and
8 that's what the *Dahlstrom* case stands for.

9 And both cases required reversals of convictions because
10 of erroneous instructions.

11 **THE COURT:** Okay. All right. Then I'm on notice.
12 I'm not going to give an instruction based solely upon the
13 language in this case.

14 No. 9, we've already -- I've already ruled on. The model
15 instruction will be given.

16 Now, you submitted two new ones.

17 **MR. COHAN:** Yes, Your Honor.

18 **THE COURT:** This is Docket 139. The first one, I
19 instruct you that since 2007, the IRS has authority to treat
20 any frivolous claims as if it were never submitted and proceed
21 without delay to collect any taxes and interest in penalties.

22 **MR. COHAN:** There's a typographical error, Your
23 Honor. There's an "S" on the word "claim" that should not be
24 there.

25 **THE COURT:** Okay. All right. Do you wish to be

1 heard?

2 **MR. COHAN:** Yes. That's --

3 **THE COURT:** Also --

4 **MR. COHAN:** -- the law.

5 **THE COURT:** -- based upon case law.

6 **MR. COHAN:** Well, no, it's based on 26 United States
7 Code Section 6330 subparagraph G.

8 **THE COURT:** Okay. All right.

9 **MR. COHAN:** As applied in those two cases.

10 **THE COURT:** Okay. And what does the code section say
11 specifically?

12 **MR. COHAN:** It's really complicated.

13 **THE COURT:** Does it say this? It seemed -- I mean, I
14 looked at this, and it seemed very -- this is a very
15 simplistic way of saying what the code section and those cases
16 say.

17 **MR. COHAN:** Well, I will refer --

18 **THE COURT:** So tell me what the code section says.

19 **MR. COHAN:** As is sometimes the case, one code
20 section incorporates another. So that's the case here.

21 And I will invite the court's attention, if I may, to
22 6330(g), which incorporates 6702 -- bear with me a second, and
23 I'll find it.

24 **THE COURT:** Does 6330(g) apply to a frivolous claim
25 or a frivolous request for a hearing?

1 **MR. COHAN:** I don't think those things are mutually
2 exclusive, Your Honor.

3 **THE COURT:** Well, tell me what it applies to.

4 **MR. COHAN:** Just a second. I'm trying to find this
5 6330(g).

6 (Pause in the proceedings.)

7 **MR. COHAN:** Got it. Okay.

8 **THE COURT:** Oh, I have it here, too.

9 **MR. COHAN:** Okay.

10 **THE COURT:** Yes, here it is. I have it.

11 **MR. COHAN:** Yes. It's 6702(b)(2) capital (A). You
12 have to refer to that in order to understand what is
13 contemplated by frivolous requests for hearing, et cetera.
14 That's what 6330's heading is.

15 So typically notwithstanding any other provision of this
16 section, if the secretary determines that any portion of a
17 request for a hearing under this section or section 6320 meets
18 the requirements of clause 1 or 2 of section 6702(b)(2)(A),
19 then the secretary may treat such portion as if it were never
20 submitted and such portion shall not be subject to any further
21 administrative or judicial review.

22 So then one has to go to 6702(b)(2)(A) to see whether it
23 meets those requirements.

24 **THE COURT:** And what does that section say?

25 **MR. COHAN:** I'm looking for it, Your Honor? I did

1 summarize it for the court, though, in simple English.

2 **THE COURT:** Well, obviously it wasn't simple enough,
3 Mr. Cohan.

4 **MR. COHAN:** Okay. I'll keep trying. Civil
5 penalty -- I'm inviting the court's attention respectfully to
6 6702(b). And it was (B), sub (2), sub sub (A).

7 And that says, specified frivolous submission, for
8 purposes of this section, A, specified frivolous submission,
9 the term specified --

10 **THE COURT:** Wait. Wait. Speak up just a little bit
11 more. I can't quite hear you.

12 **MR. COHAN:** Specified frivolous submission means a
13 specified submission, if any portion of such submission, small
14 "i" is based on a position with which the secretary has
15 identified as frivolous under subsection C, or 2, reflects a
16 desire to delay or impede the administration of federal tax
17 laws.

18 And it is that last one that responds directly to what the
19 government has repeatedly stated in -- in terms of accusing
20 Mr. Grant of committing the offense, that all he did was take
21 frivolous positions before the tax court and other courts for
22 the purpose of delay.

23 And so the purpose of the instruction is that didn't delay
24 the Internal Revenue Service from collecting if it wanted to.

25 **THE COURT:** Okay.

1 **MR. COHAN:** All they had to do was go ahead and
2 collect.

3 **THE COURT:** Okay. I don't have the second section in
4 front of me, but assuming that it says what you said, any
5 response?

6 **MR. KLUGE:** I don't see this instruction as being
7 relevant in any way to the facts in this case. The -- If
8 there was any claim -- any challenge to the IRS efforts that
9 were deemed frivolous, it was before 2007. It was the -- the
10 CDP request that the defendant filed.

11 And I don't see how this relates to any of the elements of
12 the offense in this case, so I don't really see how it's
13 applicable at all.

14 **THE COURT:** Yeah, which element does it relate to?

15 **MR. COHAN:** Well, what the -- what affirmative acts
16 are they alleging? And what was the cross of him about to the
17 effect that these petitions were filed and these positions
18 were taken just for purposes of delay?

19 It was to show evidence of intent to delay, and any delay
20 on the part of the Internal Revenue Service from 2007 on was
21 self-imposed, not created by Mr. Grant.

22 **THE COURT:** Any response?

23 **MR. KLUGE:** I still don't see any relevance to the
24 particular elements in this offense, Your Honor.

25 **THE COURT:** Hmm. Hmm.

1 **MR. KLUGE:** It's vague and it's confusing.

2 **THE COURT:** There has been -- There has been no
3 testimony about this subject. I am a little concerned. There
4 obviously has been testimony. Mr. Cohan has questioned a
5 number of witnesses about the ability -- I mean, because part
6 of the problem is, right, the failure to -- to cooperate
7 essentially -- to cooperate in the attempted examination and
8 assessment of a tax. Right?

9 **MR. KLUGE:** Yes, Your Honor.

10 **THE COURT:** And Mr. Cohan has asked any number of
11 witnesses whether or not they were aware of the fact that
12 Mr. Grant's draw was, you know, a mirror image of his
13 brother's draw. They could have figured out tax through other
14 means and made the assessment even with -- notwithstanding his
15 lack of cooperation.

16 So this seems like it's somewhat relevant. I'm just not
17 sure that -- and I appreciate that you tried to simplify this.
18 I'm just not sure that this is an accurate way to capture the
19 interplay between those statutes.

20 **MR. COHAN:** I'm not disagreeing with you. That was
21 the best I could do trying to put this in English that's
22 rarely comprehensible because I don't think it is the way it's
23 written.

24 **THE COURT:** Okay. So why don't the two of you -- I'm
25 sort of tentatively disposed to giving some instruction on

1 that. I'd like you to work with government counsel over the
2 weekend.

3 You both -- both you of you should work -- both sides
4 should work together on the legal duty and on this one.

5 **MR. COHAN:** We shall, Your Honor.

6 **THE COURT:** Okay.

7 All right. And then the defendants' theory of the case --
8 this, once again, is based upon a number of cases that we've
9 talked about through the course of the trial, *Cohen*, *Finley*,
10 *Powell*, and *Cheek*.

11 Do you want to be heard on that one?

12 **MR. COHAN:** Yes, I do. I think what really takes
13 this out of the stock instructions is the law that's been made
14 in this circuit since *Finley* and *Cohen*. Those are the cases
15 that really allow for the testimony that was elicited from
16 Dr. Woods.

17 And so they -- the case law broadens what is appropriate
18 for the jury to consider in that we have opinion evidence,
19 expert opinion evidence that really needs to be considered as
20 evidence of lack of willfulness that is beyond merely a
21 good-faith belief but evidence that is not readily
22 understandable to people who don't have the expertise of a
23 psychologist or a psychiatrist.

24 And that's why without some sort of guidance as to what
25 that evidence has to do with willfulness, I don't think jury's

1 adequately instructed, and that's why I proposed this
2 instruction.

3 I didn't really come up with a theory of the case
4 instruction until I had had a chance to think about Dr. Woods'
5 testimony in real detail and I looked at these cases and
6 thought, well, there's something more that needs to be said
7 that incorporates that. And I wanted to do it as succinctly
8 as I could.

9 And I think there's good law on theory of the case
10 instruction in the Ninth Circuit. The cases are -- I think
11 the most recent one is *Kayser*, K-a-y-s-e-r. It's found at 488
12 F.3d 1070 at page 1073. It's a 2007 case citing an earlier
13 Ninth Circuit case on -- I'll quote from it.

14 Quote, our cases hold that a defendant is entitled to have
15 the judge instruct the jury on his theory of defense provided
16 that it is supported by law and has some foundation in the
17 evidence, end quote.

18 I feel like now in the aftermath of judge -- excuse me.
19 Now I'm doing it -- Dr. Woods' testimony, that we're entitled
20 to this theory of the case instruction or something that
21 resembles it pretty closely.

22 **THE COURT:** Yeah, the -- the problem that I have with
23 it is the last sentence, particularly the "a subjective
24 belief."

25 It's -- It's not just that he believed it so, therefore,

1 he's not guilty. It's that it has to arise to a sufficient
2 level of good faith. It has to arise to a good-faith belief.
3 It's not just a subjective belief that he's not guilty.

4 **MR. COHAN:** Not so.

5 **THE COURT:** It has to be a good-faith belief. And
6 the definition of "good faith" has been defined in many
7 places.

8 **MR. COHAN:** That language that I put in there was
9 based on *Cheek v. United States*, Your Honor. That's a
10 Supreme Court decision. And I think that's almost verbatim
11 from *Cheek*, if not actually verbatim.

12 **THE COURT:** Okay. I'm not inclined to give this with
13 that last sentence.

14 **MR. COHAN:** I do believe subjective belief that he
15 was not violating the law is a complete defense of the charges
16 in this case. And that's why the -- our -- you know, good
17 faith is something that you attribute to people without
18 consideration of whether they are suffering from some sort of
19 mental condition.

20 And so I just think it's necessary to explain this. And I
21 added in there that -- and this is right out of *Cheek*, the
22 unreasonableness the defendant's claimed beliefs can be
23 considered by the jury in determining whether it's really held
24 in good faith.

25 But a subjective belief, no matter how unreasonable, is a

1 complete defense. I think good faith is just sort of
2 confusing it. What is the -- How do you reconcile good faith
3 with, well, he totally believes it? It's unreasonable to
4 other people, and he suffers from a mental condition.

5 **THE COURT:** But that's the defense, is good faith.
6 It's not just that he didn't believe it. It's not just a
7 subjective belief. It's a good-faith --

8 **MR. COHAN:** What is good faith -- If you really
9 subjectively believe it, how can you qualify it -- well, he
10 really believes it's subjective, but he doesn't really
11 subjectively believe it in good faith? I don't understand
12 that.

13 **THE COURT:** Well, what is the instruction. You took
14 I think from the -- because you argued this at the pretrial
15 conference, and the model instructions from -- the federal
16 jury practice treatise defines it.

17 And it actually provides a good-faith defense for
18 Internal Revenue Code criminal provisions, and it defines it.

19 It says the good faith of the defendant is a complete
20 defense to the tax charge because good faith is simply
21 inconsistent with willfully attempting to evade or defeat a
22 tax.

23 And then it says, while the term "good faith" has no
24 precise definition, it means, among other things, an honest
25 belief, a lack of malice, and the intent to perform all lawful

1 obligations.

2 A person who acts on a belief or on an opinion honestly
3 held is not punishable under the statute merely because that
4 honest belief turns out to be incorrect or wrong.

5 **MR. COHAN:** Well, I would urge the court to give that
6 instruction.

7 **THE COURT:** Well, that seems to me to be a more
8 acceptable definition of "good faith" than what you've got
9 here.

10 **MR. COHAN:** Well, then --

11 **THE COURT:** It is to me, in any event.

12 **MR. COHAN:** I respectfully request that court give
13 that in lieu of the one that I've requested if the court's not
14 going to give the one I requested. Just redact the last
15 sentence and put "good faith" definition that Your Honor just
16 read into the record a moment ago.

17 (Pause in the proceedings.)

18 **THE COURT:** Well, this instruction goes on to say, if
19 a person acts without reasonable grounds for belief that his
20 conduct is lawful, it is for the jury to decide whether that
21 person has acted in good faith in order to comply with the law
22 or whether that person has willfully attempted to evade or
23 defeat the tax.

24 In determining whether or not the government has proven
25 that the defendant willfully attempted to evade or defeat a

1 tax or whether the defendant acted in good faith, the jury
2 must consider all of the evidence received in the case bearing
3 on the defendant's state of mind.

4 The burden of proving good faith does not rest with the
5 defendant because the defendant has no obligation to prove
6 anything to you. The government has the burden of proving to
7 you beyond a reasonable doubt that the defendant acted
8 willfully.

9 In the -- If the evidence in the case leaves the jury with
10 a reasonable doubt as to whether defendant acted in good faith
11 or acted willfully, the jury must acquit the defendant.

12 That's what the entire instruction says. And that's part
13 of the federal practice. I believe you relied upon that
14 previously, but --

15 **MR. COHAN:** I did.

16 **THE COURT:** -- have subsequently changed it and
17 modified it.

18 **MR. COHAN:** Well, I think I tendered it earlier, and
19 the court indicated it wouldn't give it.

20 **THE COURT:** Well, because you just keep taking bits
21 and pieces out of it. I mean, the whole thing -- if there is
22 going to be a separate definition of "good faith" or
23 "willfulness" that is not covered by the Ninth Circuit's
24 willful instruction, it has to be a complete statement.

25 It can just be bits and pieces that you pluck out of

1 different cases.

2 **MR. COHAN:** Very well, Your Honor.

3 **THE COURT:** All right. Government hasn't been heard
4 on this yet.

5 **MR. KLUGE:** Your Honor, we would reiterate our
6 position that we took in Document No. 97 in which we cited
7 cases from the Ninth Circuit, in which the Ninth Circuit has
8 repeatedly rejected that a separate good-faith instruction is
9 required.

10 And I don't see any reason why this case is any different
11 than those. And *United States vs. Hickey* clearly says that,
12 holding that it -- argumentative entitlement to a separate
13 good faith instruction in addition to other instructions on
14 specific intent is foreclosed by Ninth Circuit precedents.

15 And I see no reason to -- or to vary -- to modify or
16 deviate in any way from the model instruction 9.42 provided by
17 the Ninth Circuit pattern instructions.

18 **THE COURT:** Okay. All right. Let me take a look at
19 that case before making a decision.

20 If I am going to give anything in addition to 9.42, I
21 would give this model instruction and not the ones that you've
22 proffered. If I'm going to give one, but I'll take a look at
23 the case to determine if it's appropriate to give both of them
24 at the same time.

25 **MR. COHAN:** Thank you.

1 **MR. KLUGE:** Can you -- Your Honor, just -- I didn't
2 quite hear --

3 **THE COURT:** Oh, it's from the -- the O'Malley federal
4 Jury Practice and Instruction, Sixth Edition, 2015.

5 **MR. COHAN:** Yeah, I quoted from that in one of the
6 ones we sent?

7 **THE COURT:** Yeah, this came from your brief. I
8 looked at that one.

9 **MR. COHAN:** Ah, there it is.

10 **THE COURT:** All right. So I'm just not interested in
11 picking and choosing. But it is a model instruction of some
12 sort so it's been tried and tested. It's not just some
13 language in a case.

14 So I would be more inclined to use it, in addition to
15 something to 9.42. But I'll take a look and see if it's
16 appropriate to be, because 9.42 does include that paragraph on
17 willfulness. And I'll look and see if it makes sense to give
18 these two together, and I'll let you know on Monday morning.

19 **MR. KLUGE:** Very well, Your Honor.

20 **MR. COHAN:** Thank you, Your Honor.

21 Okay. I think that that's it.

22 **MR. KLUGE:** Yes, Your Honor. I just want to make
23 sure we don't to have file the amended instructions. We just
24 provide a courtesy copy based on your rulings today to the
25 court --

1 **THE COURT:** Yeah. Just --

2 **MR. KLUGE:** -- or --

3 **THE COURT:** Just a blind copy of all of the
4 instructions.

5 **MR. KLUGE:** With the title on each instruction.

6 **THE COURT:** With the title on each instruction. I
7 will prepare a cover -- cover sheet so you don't need to do
8 that. When they're given to the jury, we will give them a
9 complete set of the instructions with the cover. And then it
10 will be scanned and filed on the docket.

11 **MR. KLUGE:** Okay.

12 **THE COURT:** So you'll have a complete set, the same
13 set that the jury gets.

14 **MR. KLUGE:** Understood, Your Honor. Thank you.

15 **THE COURT:** All right.

16 All right. I think that takes care of all of the
17 instructions. You all have decided not to change the verdict
18 form in lieu of the revised jury instruction. I believe
19 that's it.

20 **MR. KLUGE:** That's correct, Your Honor.

21 **THE COURT:** Okay. Let me see if I have anything
22 else.

23 (Pause in the proceedings.)

24 **THE COURT:** No. All right. So you'll prepare them
25 all, including the limiting instructions. You'll put all

1 titles on, and the two sides will work together on the two
2 legal instructions.

3 **MR. KLUGE:** Yes, Your Honor.

4 **THE COURT:** Okay. All right. Then we'll see you
5 Monday morning.

6 **MR. COHAN:** Thank you, Your Honor.

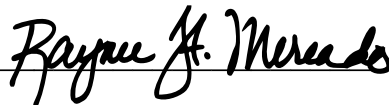
7 **THE COURT:** You're welcome.

8 (Proceedings were concluded at 3:57 P.M.)

9 --o0o--

10 **CERTIFICATE OF REPORTER**

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled matter.
13 I further certify that I am neither counsel for, related to,
14 nor employed by any of the parties to the action in which this
15 hearing was taken, and further that I am not financially nor
16 otherwise interested in the outcome of the action.

17
18 

19 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

20 Friday, February 17, 2017